

*United States Court of Appeals
for the Second Circuit*



**APPELLEE'S
APPENDIX**

Docket No.

74-2681

B-19
PS

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

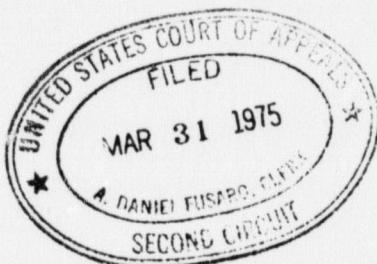
v.

RONALD RICH,

Appellant

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES



GEORGE W. F. COOK
United States Attorney

JEROME F. O'NEILL
WILLIAM B. GRAY
Assistant U.S. Attorneys
District of Vermont

3

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
CRIMINAL DOCKET sheets for CR. 74-15	1
Excerpts from the transcript "Hearing before The Honorable James S. HOLDEN, Chief, U.S. District Judge, For The District of Vermont, on Respondent's Change of Plea, at Rutland, Vermont, 9 May 1974, commencing at 1:56 p.m."	10
Excerpts from the transcript "SUPPLEMENT TRANSCRIPT to PRE-SENTENCE HEARING AND SENTENCING, before The Honorable James S. Holden, Chief, U.S. District Judge, For The District of Vermont, at Rutland, Vermont, 9, 10, 11 and 12 September 1974"	30
Excerpts from the transcript "PRE-SENTENCE HEARING, AND SENTENCING, before The Honorable James S. HOLDEN, Chief, U.S. District Judge, For The District of Vermont, at Rutland, Vermont, 9, 10, 11 and 12 September 1974"	40
Excerpts from the transcript "ARGUMENTS OF COUNSEL JUST PRIOR TO SENTENCING, only, before The Honorable James S. Holden, Chief, U.S. District Judge, at Rutland, Vermont, 11 September 1974, commencing at 11:02 a.m."	51
Excerpts from the transcript "SENTENCING, only, before The Honorable James S. HOLDEN, Chief, U.S. District Judge, For The District of Vermont, at Rutland, Vermont, 12 September 1974, commencing at the hour of 9:55 a.m. and ending at the hour of 10:24 a.m."	75
Excerpts from the transcript "HEARING ON DEFENDANT'S MOTION TO WITHDRAW PLEA OF GUILTY. Before: HONORABLE JAMES S. HOLDEN, Chief Judge, Montpelier, Vermont, October 21, 1974"	85
NOTICE OF APPEAL	121
AFFIDAVIT OF JEROME F. O'NEILL	122

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

HULDEN

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.: U. S. Attorney
vs. RONALD RICH		
		For Defendant: Hanford G. Davis, Esq. (Re Brandón, Vermont)
Timothy J. O'Connor, Jr. 40 Western Avenue Brattleboro, VT	Edward A. John, Esq. (APPT) 11 Putney Road Brattleboro, VT 05301	Peter Langrock, Esq. Middlebury, Vt.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed FEB 5 1974	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 21 & 18					
Sec. 812, 841, 846, 848, 952, 960 and 963; Sec. 2, respectively .					

DATE	PROCEEDINGS
Jan. 24	Filed Indictment for violation of Sections 812, 841, 846, 848, 952, 960 and 963, Title 21, United States Code; Section 2, Title 18, United States Code.
" " 28	Filed Record of Grand Jurors Concurring.
" " 28	Filed Government's Notice.
" " "	P. #2 sealed by Direction of Court 1-28-74.
" " "	In open Court before Judge Holden. William B. Gray, Ass't. U. S. Attorney and Jerome F. O'Neill, Ass't. U. S. Attorney for Government. Hanford G. Davis, Esq., for Defendant.
" " "	Hanford G. Davis, Esq., enters his appearance for Defendant. Defendant Ronald Rich in Court with his attorney, Hanford G. Davis, Esq., for arraignment.
" " "	Court makes inquiry of Defendant as to whether he has had the opportunity to speak with his attorney on the Indictment and if he wished to plead, concurred in by Defendant Rich.
" " "	Defendant waives reading of Indictment and enters a plea of not guilty as to each of Counts I through X.
" " "	ORDERED: that not guilty plea is entered to each and all counts entered in the Indictment.

1

DATE
1974

PROCEEDINGS

Jan. 28	Mr. Gray requests that bail be increased to \$100,000.00, objected to by Mr. Davis.	
" "	ORDERED: that in view of the fact that \$30,000.00 is pending in the Court, the Court will increase the bail to \$50,000.00 in this case.	
" "	Mr. Gray opposes any additional time be given to Defendant to post the additional bail.	
" "	ORDERED: if bail can be raised, it can be done by the individual participation of Defendant. Defendant is remanded to the custody of the Marshal, complying with the bail requirements.	
" "	Filed Order re Government's Notice. Mailed copy to attorneys.	3.
Feb. 20	Filed Deft.'s Motion to make Deft. available for polygraph tests.	4
" "	Deft.'s Motion for the Suppression of Evidence, with Memorandum attached thereto.	
" 21	Filed Deft.'s Motion to Produce taped telephone conversations.	5
" 22	" Government's Response to Deft's Motion for Transportation to Middlebury, Vt. and Response to Motion for Suppression of Evidence.	6
" 25	In open Court before Judge Holden. William B. Gray, Ass't. U. S. Attorney and Jerome F. O'Neill, Ass't. U. S. Attorney for Government. Hanford G. Davis, Esq., and Peter Langrock, Esq., for Defendant Ronald Rich. Peter Langrock, Esq., for Defendant Linda Rich.	7.
" "	Hearing on Defendant Ronald Rich's Motion for the suppression of evidence.	
" "	Peter Langrock, Esq., counsel for Linda Rich, enters his appearance as co-counsel for Defendant Ronald Rich, who stated to Court that he had also filed a Motion for Suppression of Evidence as to Defendant Linda Rich and requested that both motions be taken up at the same time, concurred in by Mr. Gray.	
" "	Mr. Gray states to Court that Government will call its witnesses first.	
" "	Mr. Langrock, with agreement of Government, stated that witnesses be sequestered from the Courtroom.	
" "	Opening statements were made to the Court by Mr. Gray.	
" "	Cpl. Stanley T. Merriam, Jr., sworn by Clerk, was examined for Government.	
" "	Filed Government's Subpoena to Testify returned served.	
" 26	Hearing on Defendants Ronald Rich and Linda Rich's Motions for Suppression of Evidence resumed.	8.
" "	Court states that record may show that Linda Rich is not present but she has waived her presence at the start of this hearing.	
" "	Cpl. Stanley T. Merriam, Jr. was recalled and recross-examined by Mr. Langrock.	
" "	Filed Defendant Linda Rich's Waiver of Defendant's Presence. (See Cr. 73-91)	
" "	The following witnesses, sworn by Clerk, were examined for Government: Albert J. Duffy and Peter John Vinton.	
" 27	Hearing resumed.	
" "	Court, with approval of counsel and Defendants Ronald Rich and Linda Rich, announced that since there was no objection to have Peter Langrock, Esq., represent them, Mr. Langrock will continue as counsel to represent both defendants.	
" "	Peter John Vinton was recalled and cross-examined by Mr. Langrock.	

U. S. A. vs. Ronald Rich

DATE	PROCEEDINGS
Feb. 27	Government rests subject to re-opening depending on evidence submitted by Defendants.
" "	Linda Lee Rich, sworn by Clerk, was examined by Mr. Langrock.
" "	Mr. Langrock stated he had no further witnesses to call and rested.
" "	Mr. Gray states to Court Government will stand on the testimony of its direct case of its agents subject to the reservation that they're not sure, and rests the hearing at this time.
" "	Mr. Langrock makes statements to the Court as regards an illegal search of the residence, no substantial evidence and no probable cause.
" "	Closing arguments were made to the Court by Mr. Gray, in response to those made by Mr. Langrock.
" "	Further statements made to Court by Mr. Langrock, followed by Mr. Gray.
" "	Decision reserved.
" "	Court states that since the trial in this case will proceed on Monday at 9:30 A.M., a trial memorandum by counsel would be appreciated.
" 28	Filed two Government's Subpoena to Testify returned served. 9.
Mar. 1	Filed Government's Notice of witnesses or the subject of proof at the trial.
" 4	Filed Government's Trial Memorandum. 10.
" "	In open Court before Judge Holden, counsel and Defendant Ronald Rich present. 11.
" "	Court states it has been informed that counsel of record in Cr. 74-15, Mr. Hanford G. Davis, has been hospitalized and is unable to be here today because of illness.
" "	Mr. Langrock states for the record that in the suppression of evidence hearing he associated himself with Mr. Davis in certain aspects of this trial, and that this was done with the approval of both Linda Rich and Ronald Rich. Because of conflicts which would enter into this case and because Mr. Rich has indicated to him that Mr. Davis has worked for a long period of time on this case, he would still like to have Mr. Davis represent him at trial.
" "	Mr. Gray for Government concurred with Mr. Langrock's remarks as to conflicts as to his representation of both Linda Rich and Ronald Rich and the Government believes that Mr. Langrock cannot and should not go forward and represent Ronald Rich in a trial without at least another attorney present. Mr. Gray stated to Court that the Government is ready to go to trial.
" "	Court makes inquiry of Defendant Ronald Rich as to the circumstances regarding representation by Mr. Langrock and Mr. Rich informed Court he still wanted Mr. Davis to represent him at trial.
" "	ORDERED: that the case will be continued and it appears a trial date cannot be set at this time but it will be set at the earliest possible time, in view of the circumstances which has developed and in view of the Defendant's request that Mr. Davis still continue to represent him.
" "	Filed Government's Subpoena to Testify returned served. 12.
" 5	" Findings of Fact, Conclusions and Order were entered in each of the cases.(73-91 & 74-15) -- The motion to suppress the

DATE
1974

PROCEEDINGS

Mar. 5	plastic bag and contents taken by Corporal Merriam in the bedroom of the defts. at or about the time of the arrest of Ronald Rich is granted. The motion to suppress the property "described on the return of the search warrant" is denied. Copy mailed to attys.	
" 8	Filed Defendant's Motion for Bond Reduction hearing.	13.
" 11	" Government's Subpoena to Testify returned unserved.	14
" "	" Government's Subpoena to Testify returned served.	15.
" "	Filed Government's Opposition to Motion for Reduction of Bail. In open Court before Judge Holden. Jerome F. O'Neill, Ass't.	16.
" "	U. S. Attorney for Government. Ronald Rich, pro se.	17.
" "	Hearing on Defendant's Motion for Bond Reduction.	
" "	Court states record may show that Defendant Ronald Rich's counsel, Hanford Davis, Esq., is still in the hospital and Mr. Davis said he had no objection to Defendant proceeding in this case for reduction of bail.	
" "	Statements made to Court by Mr. Ronald Rich in support of his motion, objected to by Mr. O'Neill.	
" "	Mr. Rich makes further statements to Court on his own behalf.	
" "	Further statements made to Court by Mr. O'Neill, followed by Mr. Ronald Rich.	
" "	Court makes inquiry of Defendant Ronald Rich as to obtaining other counsel and Mr. Rich stated he did not want other counsel other than Mr. Davis represent him.	
" "	Court makes further inquiry of Defendant Ronald Rich.	
" "	Court makes inquiry of Mr. O'Neill..	
" "	Taken under consideration.	
" "	Court advised Mr. Ronald Rich that his case will proceed to trial as soon as his attorney is available.	
" 15	In Court before Judge Holden. Jerome O'Neill, Esq. for Govt.; Deft. present in Court without his attorney.	
" "	Further hearing on Deft.'s Motion to Reduce Bail.	
" "	Deft. waives the appearance of counsel at this hearing.	
" "	Court makes inquiries of Deft. and Asst. U.S. Attorney re bail in previous case and case pending in State Court.	
" "	Statements made to Court by Deft. and by Mr. O'Neill.	
" "	Decision reserved. Counsel for Government to inform Court what the Status of the State charges are, and as to charges in Franklin County Court.	
" 19	Filed Revised Order Specifying Conditions of Release. Mailed copy to all parties.	18.
Apr. 1	In Court before Judge Holden. William Gray, Esq. for Govt.; Hanford Davis, Esq. for Deft. Deft. present in Court with his attorney for Pretrial Conference.	
" "	Mr. Davis states his doctor does not want him to try this case until May 1, 1974.	
" "	Court makes inquiries of Deft. if his is satisfied with his attorney in view of the fact that the trial date cannot be until 5-1-74.	
" "	Deft. states he is satisfied with his attorney and is willing to wait until May 1 for trial.	
" "	Mr. Davis moves that Cr. 73-77 be dismissed and that Deft. be permitted to provide a property bond in this case.	
" "	Mr. Gray moves to dismiss Cr. 73-77 and that bond be exonerated. Written motion and proposed order to be submitted.	
" "	Court will make no ruling on property bond until tenure is made. Case continued to after May 1, 1974.	

United States of America vs. Ronald Rich

DATE 1974	PROCEEDINGS
May 9	In open Court before Judge Holden. William Gray, Ass't. U. S. Attorney and Jerome F. O'Neill, Ass't U. S. Attorney for Government. Hanford G. Davis, Esq., and Peter Langrock, Esq., for Defendant.
" "	Peter Langrock, Esq., enters his appearance for Defendant Ronald Rich.
" "	Defendant Ronald Rich in Court with his attorneys, Hanford G. Davis, Esq., and Peter Langrock, Esq., for Change of Plea.
" "	Court makes inquiry of Defendant if he is satisfied to have Mr. Langrock as co-counsel in this case, concurred in by Mr. Rich.
" "	ORDERED: that Court allows Mr. Langrock to represent Defendant as co-counsel in Cr. 74-15.
" "	Mr. Gray makes statements to Court in which he stated Defendant is willing to change his plea as to Counts 3, 6, 8 and 9 of the Indictment and have agreed with counsel that at the time sentencing is imposed by the Court that Government has no objection to dismiss the remaining counts of the Indictment.
" "	Statements were made to Court by Mr. Langrock on behalf of Defendant.
" "	Statements made to Court by Mr. Gray who requests that Court unseal the document which was ordered sealed by the Court.
" "	ORDERED: the notice of the Government in the case of Ronald Rich was sealed by order of the Court and the Court has now opened the sealed notice for the purpose of conducting the present proceedings.
" "	Court states it has before it a written request by Ronald Rich in Cr. 74-15 petitioning the Court to enter a plea of guilty and requesting the Court order the entering of the plea as to Counts 3, 6, 8 and 9 of the Indictment in this case.
" "	Counsel for defendant claim they have not received any Indictment.
" "	Mr. Gray states a copy of the Indictment has been mailed to counsel for Defendant.
" "	Court indicates that the notice was filed and it was sealed on Jan. 28, 1974, by order of the Court, and that Court will make it available to counsel for inspection at this time.
" "	Statements made to Court by Mr. Langrock and Mr. Davis, who states he has examined the notice and has all the information he needs and does not object to the timeliness of serving the notice on the counsel for Defendant.
" "	Court makes inquiry of Defendant if he is satisfied with information given by his counsel, concurred in by Defendant.
" "	Court states it is satisfied that the Defendant has had an opportunity to consult with both counsel that appear in his behalf, not only to the charges inserted in the Indictment but also to the special notice served.
" "	Court makes inquiry of Defendant as to his change of plea.
" "	Defendant asks, has leave of Court to, and does withdraw his plea of not guilty and pleads guilty to Counts 3, 6, 8 and 9 of the Indictment.
" "	Court makes inquiry of Defendant as to his understanding of the

PROCEEDINGS

3974

9 counts as to which he has pleaded to and the sentence that could be imposed, concurred in by Defendant Ronald Rich.

" Mr. Gray makes statements to Court as to the factual basis on which each of these counts is asserted.

" Further statements made to Court by Mr. Langrock on behalf of his client.

" Court makes further inquiry of Defendant as to whether he still wishes to plead guilty to each of these counts, concurred in by Mr. Rich.

" ORDERED: In view of the proceedings and subject to this hearing, the Court will grant the Defendant's request to withdraw his plea of not guilty to Counts 3, 6, 8 and 9 and will accept his plea of guilty to each of these counts and the Court will enter that order at this time.

" Mr. Gray states to Court he would like to have Court inquire of Mr. Rich's health and his understanding of what he is doing here today.

" Court makes inquiry of Mr. Rich in this regard and if he fully understands these proceedings in the Court, concurred in by Mr. Rich.

" Court states that the defendant fully understands the penalty of his plea and the penalty that can be imposed in the special application as a dangerous drug offender, and that further statements at this time might in some way prejudice the hearing that might be conducted under the provisions of Section 21 U.S.C. 849.

" ORDERED: that Court will order a pre-sentence investigation and the case will be continued until such time as the pre-sentence report is submitted to the Court and time and place for hearing is set.

" Filed Petition to Enter Plea of Guilty and Order entering Plea.
ly 30 Filed Government's Response to Motion to Reduce Bail.
" 31 " Deft's Motion to Reduce Bail.
" " " Memorandum of Law.
ig. 1 Filed Notice of Hearing and Sentencing sch. 9-10-74. Mailed copy to Aty.
" " Order Denying Motion to Reduce Bail. Mailed copy to attorneys.
16 Filed Subpoena to Testify returned served.
" 26 Filed Subpoena to Testify returned served.
28 Filed Government's subpoena returned served.
ept. 6 Filed two Govt's subpoenae returned served.
" 10 Filed Defendant's Motion to Dismiss Notice Under 21 U.S.C., Sec.
849.
" " In open Court before Judge Holden. William B. Gray and Jerome F.
O'Neill, Ass't. U. S. Attorneys for Government. Peter Langrock,
Esq. and Hanford G. Davis, Esq., for Defendant.
" " Hearing pursuant to provisions of T21, U.S.C., Sec. 849.
" " Court stated a presentence report has been prepared and submitted to
the Government as well as to the Defendant.
" " Mr. Langrock moves to dismiss Notice Under T21, U.S.C., Sec. 849 and
asks Court to accept the letter to the U. S. Attorney's Office
to serve as a memorandum of law under Local Rule 9.
" " Statements made to Court by Mr. Gray in opposition; followed by Mr.
Langrock.
" " Further statements made to Court by Mr. Gray and Mr. Langrock.
" " For the record Mr. Gray hands a copy of the Notice to Dangerous
Special Drug Offender to Mr. Langrock who acknowledges receipt
of same.

19.
20
21.
22.
23.
24.
25.
26.
27.
28.
29.

DATE
1974

PROCEEDINGS

- Sept. 10 Mr. Gray states to Court that in light of the issues raised and to the aspects with regard to 849, the Government does withdraw its Notice filed in Cr. 74-15 in which it charges that Ronald Rich is a dangerous special drug offender. Mr. Gray further requests that some of the witnesses who testified before the Grand Jury be allowed to testify before sentencing, not opposed by Mr. Langrock.
- " " ORDERED: that in light of the statements of counsel, the Government as well as the Defendant, the Court under the provisions of Rule 6 of the Federal Rules of Criminal Procedure, ordered that the testimony of certain witnesses before the Grand Jury can be heard before the time of sentencing.
- " " Mr. Langrock moves that the other agents be sequestered from the Courtroom during the questioning of Mr. Vinton.
- " " Mr. Duffy was then sequestered from the Courtroom.
- " " The following witnesses, sworn by Clerk, were examined for Government: Peter John Vinton, Albert J. Duffy and William H. Yout.
- " 11 Hearing resumed.
- " " William H. Yout was recalled and cross-examined by Mr. Langrock.
- " " At 9:52 A.M. Government rests.
- " " Court announced to counsel and defendant that pursuant to an agreement of the Government and the defendant and counsel, the Court has approved and signed an Order which makes available for consideration in this sentencing and hearing the testimony of various witnesses who appeared before the Grand Jury in this and related cases, the Court will receive and read them. Also that Court has a written stipulation agreed to by the parties, as given by the Internal Revenue Service of the income of Ronald and Linda Rich.
- " " Mr. Langrock makes statements to Court presenting an overall picture of Defendant Ronald Rich for the Court to consider in the sentencing in this matter.
- " " Mr. O'Neill makes statements to Court in response to those presented by Mr. Langrock.
- " " Mr. Langrock makes further statements to the Court for Court's further consideration, followed by Mr. O'Neill.
- " 12 Hearing and sentencing resumed.
- " " Before proceeding with sentence Court makes inquiry of Mr. Rich and asks if he is in agreement with the Probation Report and outside of a few minor instances Mr. Rich was in agreement.
- " " Court makes inquiry of Mr. Langrock of his agreement with the Probation Report, agreed to by Mr. Langrock.
- " " Sentence -- sentenced on Count 8 of the Indictment to be committed to the custody of the Attorney General for a period of three years. Sentence on Counts 3, 6 and 9 are to follow and be consecutive to the sentence on Count 8. As to Counts 3, 6 and 9 defendant is committed to the custody of the Attorney General for a period of five years with a special parole term of four years, all this to follow the sentence imposed on Count 8. Sentence on Counts 3, 6 and 9 to run concurrently with each other, for a total of eight years.
- " " Mr. Langrock asks permission on behalf of his client to withdraw his guilty plea on the four counts and for him to engage

DATE 1974	PROCEEDINGS	
Sept. 12	another attorney to represent him.	
" "	Court states defendant may make any appropriate motions and if he requests other counsel that's his option.	
" "	Further statements made to Court by Mr. Langrock on behalf of his client.	
" "	ORDERED: The oral motion made by defendant after sentencing to withdraw his plea of guilty on all four counts is denied.	
" "	Filed Judgment and Probation/Commitment Order -- defendant is hereby sentenced on Count 8 of the Indictment to be committed to the custody of the Attorney General for a period of three years. Sentence on Counts 3, 6 and 9 are to follow and be consecutive to the sentence on Count 8. As to Counts 3, 6 and 9 defendant is committed to the custody of the Attorney General for a period of five years with a special parole term of four years, all this to follow the sentence imposed on Count 8. Sentence on Counts 3, 6 and 9 to run concurrently with each other, for a total of eight years.	30.
" "	Mailed copy to attorneys.	
" "	Filed Financial Affidavit.	31.
" "	Filed Order that Grand Jury testimony of various witnesses be turned over to the Court in connection with the sentencing hearing in this case, stipulated by counsel, defendant, and with approval by the Court. Mailed copy to attorneys.	32.
" 27	" Deft's Notice of Appeal. Mailed copy to Hanford Davis, Esq., Peter Langrock, Esq., U. S. Attorney, Judge Holden, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.	
" "	" Deft's Motion for Reduction of Sentence.	33.
" "	" Deft's Memorandum in support of Motion to Reduce Sentence.	34.
" 27	Filed Appointment of Edward A. John, Esq. for Defendant.	35.
Oct. 15	Filed Deft's Motion to Withdraw Plea of Guilty.	36.
" "	" Memorandum of Law in support of Motion to Withdraw plea of guilty.	37.
Oct. 21	In court before Judge Holden. Defendant present with his attorney, Edward A. John, Esq. Jerome O'Neill, Esq., for government. Hearing on Defendant's motion to withdraw plea of guilty.	38.
" "	Ronald Rich, sworn by Clerk, was examined for Defendant and cross-examined for government.	
" "	Peter F. Langrock, sworn by Clerk, was examined for Defendant. Witness states he cannot answer certain questions unless Defendant waives client-attorney privilege.	
" "	Mr. John consults with Defendant and Defendant waives client-attorney privilege, thereafter witness Langrock proceeds to answer question. Cross-examined for government. Court makes inquiry of witness.	
" "	Decision reserved.	
Oct. 23	Filed Subpoena returned served.	39.
" 31	" Govt's Opposition to Motion to Withdraw Plea of Guilty and Memorandum of Points and Authorities.	40.
Nov. 5	" Order extending time to docket the record on appeal. Mailed copy to attys. and Clerk, U. S. Court of Appeals for the Second Circuit.	41.
" 8	Filed Memorandum and Order -- that defendant's motion to withdraw his plea of guilty on the several counts is denied and it is further ordered that the defendant's motion for reduction	

DATE	PROCEEDINGS	
1974		
Nov. 8	of sentence is denied. Mailed copy to attorneys.	42.
" 21	Filed Deft.'s atty, Edward A. John's Motion to Withdraw as counsel.	43.✓
" 26	Filed Motion for Re-Hearing of Deft. Ronald Rich.	44.✓
" " "	Motion for Reduction of Sentence of Deft. Ronald Rich.	45.✓
" " "	Memorandum of Law in Support of Motion to Reduce Sentence of Deft. Ronald Rich.	46.✓
" " "	Motion to Subpoéna Witness of Deft. Ronald Rich.	47.✓
" 25	Appointment of Timothy J. O'Connor, Jr., Esq. for Deft.	48.✓
Dec. 16	Filed Government's Opposition to Motion for Reduction of Sentence.	49.
→" " "	Government's Opposition to Motion for Re-Hearing.	50.
" 23	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.	
" 20	Filed Order -- Deft's motion to reduce sentence, motion for attendance of witnesses on reduction of sentence and motion for re-hearing of Deft's motion to withdraw plea of guilty denied. Mailed copy to attys.	51.
1975		
Feb. 18	Filed transcript of hearing held 10-21-74.	52.
" " "	Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified. (Supplemental)	
" 21	Filed Authorization to incur expense of transcript.	53.

MAY 9, 1974

1 to defense counsel in this case.

2 Of course, I would like also to state that and I
3 am sure that counsel will agree with me, there is a pending
4 case against MRS. RICH, Mr. RICH's wife, LINDA RICH, and the
5 Government has taken the firm position and I believe counsel
6 for Mr. RICH agree, that we would not discuss the possible
7 disposition of that case, no matter what it may be in connec-
8 tion with Mr. RICH's disposition of 74-15.

9 In other words, we have not discussed what may
10 occur in MRS. RICH's case and I am prepared to say ^{so,} that there
11 is no question about it that it is my understanding that the
12 Government's present intention to proceed to trial on that
13 case as we believe it is appropriate to do so.

14 So, I don't want there to be any misunder-
15 standing that that in any way, was involved in the negotia-
16 tions surrounding Mr. RICH's case.

17 MR. LANGROCK: If it Please the Court, the
18 Government states the position correctly. I have at times,
19 attempted to discuss with the Government the LINDA RICH case,
20 the Government has steadfastly refused to enter into this
21 matter. I have told my client certain professional judgments
22 regarding that case but they have not entered into this agree-
23 ment to enter a plea at all. The, - I would state for the
24 record, that I have already made certain professional judgments,

MAY 9, 1974

1 as I indicated to the Government and to the Court, with the
2 Government present in Chambers. The only judgment I have done
3 to my client with regard to sentencing, I have known my client
4 for a period of ten years, he has been involved in some prev-
5 ious litigation, I have checked to a ce- tain degree of the
6 Court's sentencing pattern and as a lawyer, I have given
7 professional judgment that I did not think the Court will
8 impose consecutive sentences in this matter. I have told my
9 client that he, he runs a very substantial risk of receiving
10 the maximum penalty, which I understood to be five (5) years
11 ^{of the} on three (3) counts, fifteen thousand dollars (\$15,000.00) fine
12 and four (4) years, or thirty thousand dollars (\$30,000.00) on
13 another count, and I have also advised my client that the
14 Government is claiming a procedure under 21 U.S.C. 849, so that
15 I have, I think my client is aware that if this is applicable
16 in this particular case, it carries a sentence of up to a
17 maximum of twenty-five (25) years.

18 We just wanted to make it clear that we
19 reserve our right regarding the challenging the applicability
20 and the constitutionality of that statute.

21 MR. GRAY: Your Honor, if I may respond
22 beliefly ~~to~~ that, I think the record should also reflect that
23 I have stated to the Court that we don't necessarily, we don't
24 enjoin necessarily in Mr. LANGROCK's evaluation of the case

MAY 9, 1974

1 that we are confident that by the time the sentence is imposed
2 by Your Honor, that Your Honor will believe that this is a
3 very, very, very serious case, and that we believe that we
4 can establish the criteria and the elements provided under
5 Section 849 in which the maximum penalty per count could be
6 increased and we by no means concur that if we fail to do so
7 that the consecutive sentences could not, or should not be
8 imposed.

9 We understand that to be just a simple state-
10 ment by Mr. LANGROCK as to what his professional judgment of
11 what the case would be, but I am sure that Mr. LANGROCK has
12 explained to his client that it is the Court's judgment which
13 governs and that he must understand that the maximum possible
14 would include a consecutive arrangement.

15 At this time, Your Honor, in order to make the
16 proceedings more understandable, I would move the Court un-
17 seal the document entitled "NOTICE TO DANGEROUS SPECIAL DRUG
18 OFFENDER," which the Government filed in this case and served
19 upon counsel on January 28, 1974. I think it would be proper
20 to ask that the record reflect that that notice was filed in
21 this case superceded a similar notice which was filed as to
22 a number of previous and now superceded indictments in which
23 RONALD RICH was named, and so that actual notice of the Govern-
24 ment's intention to proceed in this regard, first was

MAY 9, 1974

1 connect you with one of the preceding indictments.

2 MR. GRAY: That was the date, that was the
3 date of the sealing of the earlier one, Your Honor.

4 MR. DAVIS: If I might have just a moment,
5 Your Honor, to confer with Mr. LANGROCK and our client, I
6 think we can clear this matter up in about two minutes.

7 THE COURT: Very well, the Court will indicate
8 that the Notice that I opened here on the Bench, at the sug-
9 gestion of the Government, is now in, has been opened and the
10 Court will certainly make it subject to the inspection by the
11 Defendant and his counsel at this time.

12 MR. GRAY: Thank you, Your Honor.

13 MR. LANGROCK: Thank you, Your Honor.

14 RECESSED FROM 2:38 P.M. UNTIL 2:50 P.M.

15 MR. LANGROCK: If it Please the Court, if I
16 may first, in connection with this matter, I would like to
17 indicate that what I advised my client I made certain represen-
18 tations to him concerning the applicability of this particular
19 four
Section in this case. I did so on/ separate grounds and it
20 was based upon the facts surrounding his background on the
21 constitutionality of the Notice and another matter; I also
22 at that time, based upon the fact that the, it was my under-
23 standing from the file that there was a substantial argu-
24 ment as to the applicability from the filing situation. The

HEARING

PAGE 15

MAY 9, 1974

1 fact that the notice has been filed and I am sure there is a
2 mix-up here somewhere, which is not the fault of the United
3 States Attorney's office, it does change the latter's position
4 but it does not change our underlying position and we may go
5 forward. We do understand the potential applicability of it.
6 I have advised my client that I believe that it is not applic-
7 able that it would not be substantiated that we..(unintellig-
8 ible)....it, that we are in a position of that being a separ-
9 ate type of trial, and so if we have to go forward at this
10 point on the Counts of Guilty and I have to make a justment
11 as to it in the future, as to the applicability of that and
12 I have advised my client accordingly, this new factor cuts
13 out one ground but does not change my basic opinion.

14 It is my understanding that Mr. DAVIS has
15 inspected this matter and it is very similar to the previous
16 one that we have filed and we have indicated to the Court
17 that we have a, that we are aware of that potential applica-
18 tion in this case.

19 THE COURT: Has counsel had an opportunity
20 to inspect the Notice that's been filed?

21 MR. DAVIS: Yes, Your Honor, I have just
22 inspected it and I thought that I would put it in the record
23 that while I have no recollection of having seen it before,
24 it is very possible that Mr. GRAY did hand me a copy in the

MAY 9, 1974

1 Court House and that it is possible that he mailed me one
2 which didn't get into the file, but in any event, the record
3 may show that I have examined this and have all the information
4 that I need with respect to it. Oh, and Mr. LANGROCK just
5 suggested we do not object to the timeliness of the serving
6 of the Notice on the counsel for the defendant.

7 MR. GRAY: Your Honor, in that regard, the
8 statute requires that the Notice be filed with the Court. It
9 does not say served, but of course, we believe we did serve it
10 and did want to in any event, such a Notice, quote, a reason-
11 able time before trial or acceptance by the Court of a plea
12 of guilty. I gather then that the counsel for Mr. RICH are,
13 under the circumstances of the prior filing and the circumstan-
14 ces of having examined it here in Court and the various con-
15 versations we have had in this regard, are acknowledging that
16 the Notice was filed a reasonable time before the acceptance
17 by the Court of the plea of guilty. If there is any question
18 about that fact, I would not even wait for their Motion to
19 Continue the matter, I would affirmatively request the Court
20 to continue the matter until they have had a reasonable time
21 to examine it because I think it is a most crucial matter and
22 if there is any doubt whatsoever, I would like to have it on
23 the record at this time.

24 THE COURT: Mr. Langrock?

HEARING

PAGE

17

MAY 9, 1974

1 MR. LANGROCK: Yes, we agree that it has a
2 reasonable time, Your Honor.

3 THE COURT: And the Court understands that
4 counsel have had an opportunity to examine the Notice that
5 was filed in this particular case and that it was similar to
6 Notice filed in the underlying indictments that were previously
7 filed and that you ^{have} had an opportunity to discuss this with
8 your client in all of its aspects.

9 MR. LANGROCK: Yes, Your Honor.

10 THE COURT: And Mr. RICH, you have had an
11 opportunity to discuss with your counsel the particular notice
12 that was filed under this Section of the Statute and been
13 in the Court's file since January 28, 1974?

14 MR. RICH: Yes, I have.

15 THE COURT: And do you wish to proceed at the
16 present time?

17 MR. RICH: Yes, at my attorney's advice, I do.

18 THE COURT: Well the record may show that the
19 Court is satisfied that the Defendant has had an opportunity
20 to consult with both counsel who appear in his behalf, not
21 only as to the subject matter of the charges asserted in the
22 indictment, but also to the Special Notice filed under 21 USC
23 Section 849. Mr. RICH, the Court does have, as I previously
24 indicated, your request to enter a plea of guilty to Counts

HEARING

PAGE

18

MAY 9, 1974

1 3, 6, 8 and 9 of the indictment, are you ready to plead?

2 MR. RICH: Yes, I am.

3 THE COURT: Do you wish to have these counts
4 in the indictment read?

5 MR. RICH: No.

6 THE COURT: What is your plea as to Count 3
7 of the indictment?

8 MR. RICH: Guilty.

9 THE COURT: And what is your plea as to Count
10 6 of the indictment?

11 MR. RICH: Guilty.

12 THE COURT: And what is your plea as to Count
13 8 of the indictment?

14 MR. RICH: Guilty.

15 THE COURT: And what is your plea as to Count
16 9 of the indictment?

17 MR. RICH: Guilty.

18 THE COURT: The Court wants you to understand,
19 Mr. RICH, that I will not or need not, accept and will not
20 accept your plea, unless I am satisfied of your guilt and that
21 you fully understand your rights. Now, if you did not request
22 the Court to accept your plea of guilty to these counts and
23 that you stood trial on Counts 3, 6, 8 and 9, of the indict-
24 ment presented by the Grand Jury, that you would be entitled

HEARING

PAGE

19

MAY 9, 1974

1 to a speedy public trial by a Judge or a Jury and at such a
2 trial, the Government would have to confront you with the
3 witnesses upon whom its testimony it relies to obtain a con-
4 viction. You would have a right to cross-examine these wit-
5 nesses with the aid of your counsel and on each count to which
6 you have offered to plead guilty, you would be presumed inno-
7 cent until such time, if ever, the Government established your
8 guilt by competent evidence to the satisfaction of the Judge
9 or the Jury, beyond a reasonable doubt, and you would be en-
10 titled to have the Court issue compulsory process to compel
11 the attendance of witnesses whom ^{you} might wish to call by way of
12 defense.

13 Now, in connection with the matter of a speedy
14 public trial, both ^{you} you and, you have a right to a speedy
15 trial and the Government has indicated its readiness for trial
16 and has been for a considerable period of time, The trial on
17 this and underlying indictments that have been superceded by
18 the present one, have been set for trial on previous occasions
19 but due to the unfortunate illness of counsel who appeared
20 for you in this case, Mr. DAVIS, the trial was continued at
21 your request. You have that in mind?

22 MR. RICH: Yes. ?

23 THE COURT: Now, the Court wants to make cer-
24 tain that Mr. DAVIS' physical condition, or the problem that

MAY 9, 1974

1 originally, - or developed, as to the Government's concern
2 about Mr. LANGROCK's representing you, because of his prior repre-
3 sentation at some other co-defendants or persons who are in-
4 volved, the Court wants you to understand that this case will
5 be brought on for trial and will afford you a reasonable time
6 to obtain other counsel if you are concerned about Mr. DAVIS'
7 physical condition or Mr. LANGROCK's situation. Do you
8 understand that?

9 MR. RICH: Yes, I do.

10 THE COURT: And the Court does not want to,
11 - wants to make certain that your interest in a speedy trial
12 have been in no way, compromised by the illness of your counsel
13 or by the fact that Mr. LANGROCK who is now appeared for you,
14 did have some concern, the Government had some concern about
15 his representing you and that the Court will grant you a full
16 opportunity to obtain other counsel and bring the case on for
17 trial, at their earliest practical moment. Do you understand
18 that?

19 MR. RICH: Yes, I do.

20 THE COURT: Now is that in any way influenced
21 your desire to come into Court and change your plea?

22 MR. RICH: No.

23 THE COURT: In view of the special situation
24 that prevails in this case and particularly in view of the

MAY 9, 1974

1 Government's Notice, filed under Section 849, the Court wants
2 you to understand that I must be satisfied that you understand
3 the maximum penalty which can be imposed in this case.

4 Now, the maximum penalty on Count 3, Count 6,
5 Count 8, on Counts 3, 6 and 9, to which you have offered
6 your, - to plead guilty, is five (5) years and fifteen thous-
7 and dollars (\$15,000.00) on each count, as specified in the
8 Statute and the maximum penalty on Count 8 to which you have
9 offered to plead guilty is four (4) years and a fine of thirty
10 thousand dollars (\$30,000.00), as specified in the Statute.

11 Both the penalty for imprisonment and fine can be imposed
12 under each count and according to the judgment of the Court,
13 if the plea is accepted, the sentences can run consecutively
14 and that the Court makes no predictions or in any way indicates
15 and I want you to understand that I can in no way decide at
16 this stage, what disposition would be made, whether the sentence
17 would be concurrent or consecutive. Do you understand that?

18 MR. RICH: Yes, I do.

19 THE COURT: And also in this case the United
20 States Attorney has filed a Notice under Section 849 of Title
21 21 which charges that you are a dangerous special drug offender.
22 Now, if the Court accepts your plea at some time before sent-
23 ence is imposed, the Court will conduct a hearing at which
24 the Government and you, through the aid of your counsel, will

HEARING

PAGE

22

MAY 9, 1974

1 have an opportunity to submit evidence for the Court's con-
2 sideration regarding this allegation, to establish whether you
3 are or whether you are not a dangerous special drug offender.
4 Do you understand that?

5 MR. RICH: Yes, I do.

6 THE COURT: And if the Court is satisfied from
7 all the evidence and the information before it, at that time,
8 that is, at the time of the hearing, that you are a dangerous
9 special drug offender and that a period of confinement longer
10 than that previously indicated as to the counts without this
11 notice, a longer period is required in order to protect the
12 public, from further criminal conduct on your part then the
13 maximum penalty on each of the five counts to which you have
14 offered your plea of guilty is a term not to exceed twenty-five
15 (25) years. Do you understand that?

16 MR. RICH: Yes, I understand that.

17 THE COURT: In addition, the Court is required,
18 because of the nature of the offenses that are charged, to
19 impose a special parole term to follow any term of confinement,
20 that is any time that you might spend in prison and this spec-
21 ial term shall be at least three (3) years and may be consider-
22 ably longer, and if during that special parole term any of the
23 conditions of the parole were violated by you, the parole
24 might be revoked in such circumstances, the original term of

HEARING

PAGE
23

MAY 9, 1974

1 imprisonment, shall be increased by the period of a special
2 parole term and shall not be diminished by the time you have
3 spent on parole.

4 Now, have you discussed, - do you understand
5 that?

6 MR. RICH: Uh huh.

7 THE COURT: The answer?

8 MR. RICH: Yes.

9 THE COURT: And have you discussed these
10 maximum penalties with your attorney, Mr. DAVIS and Mr.
11 LANGROCK?

12 MR. RICH: Yes, I have.

13 THE COURT: And that is in addition to what the
14 Court has already explained to you this afternoon.

15 MR. RICH: In addition?

16 THE COURT: I mean you have discussed them
17 beyond the understanding that I have tried to convey to you
18 here in open court?

19 MR. RICH: Yes, I have.

20 THE COURT: Do you fully understand the maximum
21 term which might be imposed in your case?

22 MR. RICH: Yes, Your Honor.

23 THE COURT: Now both the Government and your
24 own attorney have indicated that there have been discussions

HEARING

PAGE

24

MAY 9, 1974

1 about your case, particularly as it relates to certain other
2 counts that the Government has indicated, it will dismiss
3 after final sentence in this case is passed. You have heard
4 the representations made by your counsel and by the Assistant
5 United States Attorney in this regard that have been stated
6 here in open court?

7 MR. RICH: Yes, I have.

8 THE COURT: Now, is there any further under-
9 standing that you entertain on your part, is there anything
10 more about these discussions that you have been led to believe
11 might have been involved in this matter?

12 MR. LANGROCK: If it Please the Court, I think
13 if I may interject at this point, I don't know of anything else
14 that is on the record except as I have indicated previously,
15 I have given my client certain professional judgments which I
16 believe he has considered in entering this plea at this time,
17 but those are not promises from the officials ^{or} of the State in
18 any way.

19 THE COURT: Well, you understand that whatever
20 Mr. LANGROCK may have voiced by way of his professional judg-
21 ment has no bearing on what the Court may ultimately do in
22 making final disposition in your case?

23 MR. RICH: Yes, Your Honor.

24 THE COURT: That what Mr. LANGROCK views, or

HEARING

PAGE

25

MAY 9, 1974

1 what Mr. DAVIS views as to what might be the ultimate outcome
2 in no way binds the Court and has no control as far as the
3 Court is concerned?

4 MR. RICH: Well, I am pleading guilty through
5 my lawyer's advice.

6 THE COURT: Yes.

7 MR. RICH: So, -

8 THE COURT: Yes, but there's been no further
9 understandings on, - you don't understand there^{is} anything fur-
10 ther about what action will be taken in your case, other than
11 what has been stated here in open court?

12 MR. RICH: No.

13 THE COURT: Your written petition to enter a
14 plea of guilty asserts that as to counts 3, 6, 8 and 9, you
15 are involved in the distribution of regulated drugs. Now,
16 the Court will ask the Government to state the factual basis
17 upon which each of these counts is asserted and I would like
18 to have you pay close attention, so that if there is any mis-
19 understanding about it, that you may make it known to the
20 Court so that we can properly rule on your request.

21 MR. GRAY: Your Honor, I will take each of
22 the counts to which the defendant has offered a plea of guilty
23 separately.

24 The first count is count 3 and that charges

HEARING

PAGE 34

MAY 9, 1974

1 MR. LANGROCK: If it Please the Court, in con-
2 nection with this matter concerning the circumstances that the
3 Court may have a hearing at a later date to determine the spec-
4 ial offenders section in this matter and are some matters are
5 in dispute with respect to that, I would not want my client to
6 make any particular factual statements other than a broad based
7 admission which would convey to you that he was involved in the
8 regulation, of the, in the possession and somewhat distribution
9 of regulated drugs. I do want to state for the record categor-
10 ically right now, that any implication that my client is the
11 chief people involved in this (unintelligible, sounds like
12 management) - is denied. He does admit and - stand up, Mr.
13 Rich, - and I understand that he will admit that he was involved
14 in it and the evidence the Government could produce would be
15 sufficient to obtain a conviction on all four of these particu-
16 lar counts. As to the details, we would prefer not to get into
17 them at this time because of special circumstances, is that
18 not true?

19 MR. RICH: Yes.

20 THE COURT: Mr. RICH, having in mind the full
21 nature of these proceedings, what's been said by the Court, by
22 counsel for the Government and by your own attorneys, do you
23 still wish to enter a plea of guilty to Counts 3,6,8 and 9 of
24 the indictment that the Grand Jury has presented in this case?

HEARING

PAGE 35

MAY 9, 1974

1 MR. RICH: Yes, I do, Your Honor.

2
3 THE COURT: And without more of what the Court
4 takes it that both from what you have stated here in Court
5 as well as your written request to enter a plea that you admit
6 your involvement, criminal involvement in each of the counts
7 that have been presented against you?

8 MR. RICH: Yes, Your Honor.

9 THE COURT: The Court will again ask the de-
10 fense counsel if you know of any reason, whatsoever, why the
11 Defendant should not enter a plea of guilty to each of the
counts specified in his request for (SIMULTANEOUS VOICES)

12 MR. LANGROCK: None other than... (SIMULTANEOUS
13 VOICES)

14 THE COURT: -- for entering a plea of guilty?

15 MR. LANGROCK: - on the contrary, Your Honor,
16 I have advised him that he should do so.

17 THE COURT: And Mr. DAVIS, do you concur?

18 MR. DAVIS: Yes, Your Honor, I gave him the
19 same advice for the same reasons.

20 THE COURT: The, in view of the proceedings
21 and the subject of this hearing, the Court will grant the
22 Defendant's request to withdraw his plea of Not Guilty to
23 Counts 3, 6, 8 and 9 and will accept his plea of guilty to
24 each of these counts and in so doing, I will enter an Order

HEARING

PAGE

36

MAY 9, 1974

1 that the plea is knowingly made with full advice of counsel
2 that it is voluntary and that each of the pleas asserted as to
3 each count has a basis in fact and contains all of the elements
4 of the crime charged therein and is therefore accepted and the
5 Court will enter that order at this time.

6 MR. GRAY: Your Honor, may I ask the Court to
7 inquire into one or two additional matters that come to mind?

8 THE COURT: Certainly.

9 MR. GRAY: Without any intention to accuse Mr.
10 RICH of anything in addition, I would like to say that we have,
11 during the course of our investigation, received some evidence
12 that Mr. RICH, himself, from time to time, has used drugs. I
13 point this out not as it might relate to any culpability on
14 his part, but if that is true, I would like Your Honor to in-
15 quire of Mr. RICH whether he is well today, whether he under-
16 stands the nature of the proceedings and I don't call upon him
17 to acknowledge whether he has or has not used drugs. I just
18 wanted to indicate the reason why I was making the statement and
19 to ask Your Honor to inquire as to Mr. Rich's health and ask
20 him if he understands the proceedings here today.

21 THE COURT: Mr. RICH, have you taken any medi-
22 cation or any substances that might in any way, impair your
23 ability -

24 MR. RICH: No.

MAY 9, 1974

1 THE COURT: - to fully understand these pro-
2 ceedings in Court?

3 MR. RICH: No, Your Honor.

4 THE COURT: And the Court will also make a
5 finding that the Defendant fully understands the consequences
6 of his plea and the maximum penalty that can be imposed as to
7 each count and also the penalty that might result in the event
8 the Government's presentation at the time of special hearing
9 on, under Section 849 that the penalty that is involved in that
10 special application of the dangerous and special drug offender.

11 MR. GRAY: Your Honor, one additional matter
12 I think I understood Mr. LANGROCK's comments with respect to
13 Mr. RICH, his reluctance to have Mr. RICH state the exact
14 nature of his involvement and I don't think that the law
15 requires him to do so but I do understand and I ask counsel
16 and perhaps with Mr. RICH's to acknowledge that he is, in
17 substance, agreeing that he is guilty of the counts charged
18 and that although he might wish to disagree with, to some
19 extent, the role he played or the exact position he played in
20 a distribution scheme, that he is acknowledging that he did
21 participate substantially as outlined, certainly enough so that
22 he is in fact guilty of the offenses charged.

23 MR. LANGROCK: We think our position is quite
24 clear in this, Your Honor.

May 9, 1974

1 THE COURT: Yes, the Court takes it that the
2 Defendant does understand his, and has acknowledged in open
3 court, his participation in each of the counts asserted and
4 the Court won't ask him to state more in accepting the plea in
5 view of the position that he has taken with the advice of
6 counsel, that further statements at this time, might in some
7 way prejudice the hearing that might be conducted under
8 special section 849.

9 MR. GRAY: Thank you, Your Honor.

10 THE COURT: And I think Mr. RICH fully under-
11 stands that. The case. The Court will order a pre-sentence
12 investigation and the case will be continued until such time
13 as the pre-sentence report is submitted to the Court and the
14 time and place for hearing is set under the provisions of
15 Section 21 USC Section 849.

16 MR. GRAY: Thank you, Your Honor.

17 THE COURT: Is there anything further that
18 counsel for the Defendant wishes to bring to the Court's
19 attention at this time?

20 MR. LANGROCK: Not, - I'd like to approach
21 the Bench on another matter for a moment, Your Honor.

22 THE COURT: Yes.

23 (3:30 p.m. at the bench, off the record)

24 THE COURT: The Court understands in the

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE

8

SEPT. 9, 10, 11 + 12, 1974

now know it.

We don't think that matches or anything of that nature attaches to criminal, in a criminal proceeding on anything as important as notice. And we also do point out that even to this date, I make representation to the Court that I do not have a copy of the notice of special dangerous drug offender in the statute. The one that was sent, I don't deny that the U.S. Attorney claims that they gave me one, they believe they do, but I still do not have it in my file, it was made clear at the last case.

I am only supposing that it is the same, in substance, as the previous one. The plea of - (whispering) - I, I, I would also point out, I think in response, - the, - when the plea of guilty was entered in this case, it was plainly stated by myself on, - on open Court, on the record, that I felt that 849 was inapplicable to this case, both on the facts and on the law and that this was what - the representation I made to my client, as a basis of which he could enter the plea. And we think that that goes, - that it meets any question that may be had about any possible prejudicial effect of the notice. We do feel my client raised the basic issue underlying it at that point.

The, the other response to the, - Mr. Gray's comment was that there is a basic inconsistency with the, in the statute with the constitutional provision, because it is necessary to advise a person with the consequences may be, before he enters it and also the statute seems to say,

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE

11

SEPT. 9, 10, 11 + 12, 1974

the interests of fairness that there should be some showing,
perhaps in connection with the Motion to Dismiss, but there
should be some showing by the Government, so the Defendant
would know why he is selected for treatment under this particu-
lar provision of the Drug Abuse and Prevention Statute., so
that he can be prepared to meet it. Perhaps this, - the
Government prefers to develop this point entirely during the
course of the evidentiary presenation.

MR. GRAY: May I respond, Your Honor?

THE COURT: Yes.

MR. GRAY: I understand Your Honor's
point and it, we certainly do expect that the proof to be
adduced, - and we are prepared to go forward, - will demon-
strate the reasons why we believe that the, Mr. RICH is a
dangerous special drug offender and why a period of confine-
ment longer than that provided for in each count, is necessary.

THE COURT: Are you referring to each
count, or are you referring to cumulative counts?

MR. GRAY: Well, Your Honor, I am
aware that if you take each count to which Mr. RICH pleaded
guilty, the maximum, if all imposed consecutively, is nineteen
(19) years. I am also aware that under the Dangerous Special
Drug Offender I would view it as Your Honor, as permitting
Your Honor to impose up to twenty-five (25) years on each
count. Although, I think we are all realistic enough to know
that that isn't what is going to happen in this case. We very
frankly do not anticipate that if we were successful under the

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
BURLAND, VERMONT 05701

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE 12

SEPT. 9, 10, 11 + 12, 1974

1 Dangerous Special Drug Offender allegations that Your Honor
2 would cumulate the counts, so we are talking, I think, theoret-
3 ically about a maximum exposure of twenty-five (25) years,
4 although I suppose Your Honor could in fact, impose more by
5 cumulating twenty-five (25) years, but I am ready to concede
6 right here and now that that is not what we would expect and
7 certainly required to state so on the record, we will state
8 on the record at the sentencing that we are not seeking that
9 period of time.

10 THE COURT: Well, I might well under-
11 stand your position, Mr. GRAY, on a single count. In fact, the
12 statute in sub-section (f) talks in language that is addressed
13 to a single violation.

14 MR. GRAY: Well, -

15 THE COURT: But here where there has
16 been a plea offered and accepted on multi-counts I wonder if
17 the picture isn't changed?

18 MR. GRAY: I understand Your Honor's
19 point and I think it's a good one. I don't expect that the
20 proof will show any justification for, which it is very hard
21 to argue that it justifies the difference between nineteen
22 and twenty-five, which is 6 years. I don't expect that we are
23 going to be able to prove the justification for that additional
24 term. But what I do have in mind, Your Honor, is reluctance
25 of any judge, in any court and I think particularly, United
26 States District Courts, before whom I have appeared to impose
27 consecutive sentences, even though the law permits them.

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE

13

SEPT. 9, 10, 11 & 12, 1974

Now, it's a, and it is a, I would be,
it is a - I would be glad to state that it is, that I think
that part of our goal in bringing this, - I don't think we are
required to state this on the record, - but part of our goal
in this is to give Your Honor, very frankly, the room within
which to impose an appropriate sentence, whatever Your Honor
deems is appropriate, but we have felt that in view of, we
think, the reluctance of many courts to impose consecutive
sentences, that it was important to prove to this Court the
severity of the crimes charged, the continuing nature of the
crimes charged, such that it would give Your Honor the legal
ability to impose perhaps a more flexible and perhaps a greater
sentence than that by any one count.

Now that, very frankly Your Honor, is
our goal. Now I, if you, if Your Honor reads this as requiring
a justification for proving the difference, between nineteen
and twenty-five, I would have to concede, Your Honor, that I
don't think that our proof will really shed much light on that.
I think it would be very hard for any proof to be as specific
as that as to the requirements for sentencing.

THE COURT: Well my point, I think I
should make it clear, is not to get recommendations or thoughts
of counsel regarding the sentence but it seems to me that the
Court does have to make a specific finding to establish that
the defendant, if the statute is applied, is dangerous within
the statutory definition. And my point in bringing this up at
this time is addressed principally to the challenge that's been

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE

14

SEPT. 9, 10, 11 + 12, 1974

raised by the defendant concerning specificity and for that reason I thought that in, before we proceed with the evidentiary aspect of this case this morning that I would like to have counsel explore that and if there is any need to make it more specific, perhaps now is the time to do it.

MR. GRAY: Well, Your Honor, I would be happy to provide it orally but I am even willing to put in writing, I don't think it would take very long, the reasons why THE United States Attorney's Office believes that a period of confinement longer than that provided for such felonious violation is required for the protection of the public. Now in just reading the statute, I am confirmed in our view that all we really need to show is why a period of confinement longer than that required for any one violation is necessary. I mean, it doesn't refer to violations.

THE COURT: Well, perhaps you're correct in that view and if you are, certainly the Court wants to know it.

MR. LANGROCK: If it Please the Court, I, - I, - I appreciate the niceities of the situation, but I think we ought to get down to the substance. I've got a young fellow here, who - who is facing up to nineteen (19) years in this Court's discretion right now. That the Government says that they are not interested in going beyond nineteen (19) years. Weve got plenty of room for it. And here they are, talking about two weeks of trial. Two weeks of putting, you know, an emotional burden, both taxing the Court, taxing the

SUPPLEMENT TRANSCRIPT TO PRE-Sentence HEARING

PAGE

15

SEPT. 9, 10, 11 & 12, 1974

1 defense counsel and taxing the defendant in a way to accom-
2 plish absolutely nothing.

3 Now it seems to me that if they made
4 a statement on the record that they cannot put forth any evi-
5 dence to show why this Court should sentence longer than it
6 has complete control over right now, that should be totally
7 dispositive of this matter, and as far as amending this matter
8 at this time we would certainly object to it. We think that
9 this is a proceeding they've had a year almost to do something
10 with and my client has been sitting around without bail for
11 a period of time. He's facing a very serious matter. He's
12 come forward before the Court. He's made disclosures. He's
13 done things. We have a pre-sentence investigation which I
14 don't think even starts to bear out their situation and they
15 have specified nothing and quite frankly I, I, I can't see the
16 the, based upon that representation that there is no need,
17 that they can't show something more than nineteen years, that
18 this Court should entertain a Motion to Amend, or Show, or to
19 go any further with the proceeding. We haven't - we haven't
20 started to get into the question of whether or not that that
21 standard is an appropriate standard under the vaguest concepts
22 of due process.

23 That here we have a man that is, -
24 we have no idea what standards there are, and certainly, if an
25 amendment is made, along this line, setting forth both, I would
26 assume some sort of a standard and evidentiary matter, we'd
want time to meet those.

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE 16

SEPT. 9, 10, 11 + 12, 1974

We have only what we have here, as I say, only given to us today.- we certainly had knowledge of the language itself and I just think that we're, we're digging ourselves into a proceeding which serves no useful purpose. It is the second time in the history of the United States it's been attempted, the first time it was thrown out and I suggest perhaps paragraph 2 of my letter would show and indicates that we are talking about doing something for D.E.A., rather than doing something for -

THE COURT: Well, we won't -

MR. LANGROCK: - or dealing with justice in the -

THE COURT: We'll not go -

MR. LANGROCK: - in this Court. I just don't -

THE COURT: Well, we're not going to get involved in that. We won't get involved in that, Mr. Langrock.

MR. GRAY: Your Honor, I do feel that I must -

THE COURT: Yes, I -

MR. GRAY: -deny that. I must state that we made this decision based upon guidance from the Dangerous Drug Section in Washington, which is also charged with enforcing these statutes to the best of our judgment, as to what was required under the circumstances.

THE COURT: My experience with the

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE 17

SEPT. 9, 10, 11 & 12, 1974

United States Attorneys' Office, Mr. Langrock, would indicate
that that suggestion is not valid and the Court won't -

MR. LANGROCK: Well, if it Please the Court, I don't mean to attack - Bill Gray, as far as I'm concerned, is as fine and decent a United States Attorney as I have ever run into. I don't mean to suggest that in any way. But I think the Court must be mindful of the fact that is really the first attempt in the Untied States. The Court also has a pre-sentence investigation in court.

THE COURT: NOW, (interrupted)

MR. LANGROCK: I think that you have to make certain deductions from those.

THE COURT: I think that the office of the United States Attorney, has a commitment to do justice in each case and I don't think extraneous considerations of this type, in view of his obligation of fairness to the defendant, has - is valid and unless the Court has some evidence to the contrary, why I don't hink that the allegations or the suggestion is important to these proceedings. The Court will take a brief recess before we proceed further.

(Recessed from 10:55 a.m. until 1:40 p.m.)

MR. GRAY: Your Honor, we appreciate the Court giving us the opportunity to consider this matter further. First, may I state some of the understandings that I have about the proceedings at this point?

It is my understanding that whether or not there was an 849 notice that Your Honor would consider

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

SUPPLEMENT TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE

18

SEPT. 9, 10, 11 + 12, 1974

hearing at least some evidence with respect to the imposition
2 of sentence as I know the Court has done in other cases in
3 which I have represented the Government. Is that correct,
4 Your Honor?

5 THE COURT: No response.

6 MR. GRAY: Your Honor will consider
7 giving the Government the opportunity to present some evidence
8 on the sentencing irrespective of the notice?

9 THE COURT: Yes, right.

10 MR. GRAY: Well and I also am aware
11 that as a matter of law, the Court does have the power as all
12 defendants, and indeed this defendant, was advised at the time
13 of his plea to impose sentences which are imposed totally
14 consecutive. I don't mean by in any sense to suggest that I
15 know what Your Honor will do, but I think it is understood that
16 the Court does have the power to impose consecutive sentences.

17 THE COURT: I believe that that was
18 pointed up at the time the plea was, the request to withdraw
19 the plea was made and the defendant and counsel indicated that
20 they were well aware of that.

21 MR. GRAY: Well I think by that Your
22 Honor means the request to withdraw the plea of "not guilty"
23 and enter a plea of "guilty"?

24 THE COURT: Right.

25 MR. GRAY: That is certainly our
26 understanding and we have had no doubts about that, Your Honor.
27 Your Honor, in light of those considerations and in light of

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

SUPPLEMENTAL TRANSCRIPT TO PRE-SENTENCE HEARING

PAGE

19

SEPT. 9, 10, 11 & 12, 1974

the issues raised by Judge Duffy's opinion and the other aspects with respect to 849, the Government is willing and at this time does withdraw its notice filed in Criminal 74-15, in which it charges that RONALD RICH is a dangerous special drug offender.

I would like to make the record very clear, however, without accusing beyond that instrument itself, in so doing, we are not acknowledging either that the notice was incorrect under the statute as Your Honor is aware, this point will be litigated and is not in this case.

Two, I don't think it is important to say what we believe the proof will show because we do intend in one method or another, to bring before the Court what the proof will show. We are certainly not conceding that Mr. RICH would not have fit the facts, we simply are just withdrawing that charge or the formality, with the understanding that we will be permitted to adduce certain evidence to show the nature of the crimes committed and the nature of the background of these offenses.

I might also add, Your Honor, that I had an opportunity to discuss with Mr. DAVIS and his/counsel, CO- Mr. LANGROCK, methods of bringing proof before this Court which Your Honor might consider relevant to sentencing. We would like to call several of the agents in any event and that was an area where we thought it best not even to ask for any agreement, frankly, just where we thought it would be easier/to call the agents and have them testify.

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

39

PRE-SENTENCE HEARING
AND
SENTENCING

PAGE

2

SEPT. 9, 10, 11 & 12, 1974

1 10:10 a.m., 9 September 1974

2 THE COURT: This Hearing was called
3 pursuant to the provisions of 121 U.S.C. 849, and Notice
4 of the Hearing was given. Pre-sentence report has been
5 prepared and I understand there it's been submitted to
6 the Government as well as to the counsel for the Defendant.

7 MR. LANGROCK: I had an opportunity
8 to review it myself, Your Honor, in my office. I don't
9 believe Mr. Davis has had a chance to but I have.

10 MR. DAVIS: No, I haven't.

11 MR. LANGROCK: I have done so on
12 behalf of the client.

13 THE COURT: And that is satisfactory
14 to you, Mr. Davis and Mr. Rich?

15 MR. RICH: (Nodding)

16 THE COURT: The Court understood
17 prior to coming in from Notice given in Chambers that
18 Counsel for the Government and - or at least for the
19 Defendant, had some matters they wished to bring to the
20 Court's attention by way of a conference, *albeit in*
21 *open* Court regarding the pending proceedings.

22 The Court notes that there are
23 several motions, one concerning some witnesses, as well
24 as the Defendant's Motion to Dismiss. Do you wish to -

**PRE-JENTENCE HEARING
AND
SENTENCING**

PAGE 3

SEPT. 9, 10, 11 • 12, 1974

1 the Court will entertain any matters that you wish to
2 bring to my attention prior to the reception of the
3 evidence in this case.

4 MR. LANGROCK: I'm not aware of the
5 motions regarding the witnesses offhand here. I do have
6 the Motion to Dismiss which was filed. I would ask the
7 Court to accept our letter to the Court with a copy to
8 the U. S. Attorney's office, under date of 6 September,
9 serving as a memorandum of law in connection with Local
10 Rule 9. It seems to me, Your Honor, the Motion itself
11 is quite clear. I think perhaps the Motion should be
12 expanded, at least the interpretation of Due Process, to
13 make it clear that the present Notice violates the
14 Statutory Proceeding or Procedure called for by 849. The
15 first, there are several objections to the statute. I
16 don't believe we should proceed with a Hearing of 21 U.S.C.
17 849, and that the matter should be dismissed. The first
18 of these is the fact that the Notice does not state with
19 particularity why it is claimed that Mr. RICH is a special
20 dangerous drug offender. We feel that the United States
21 versus "Tremante" (phonetic spelling) case is controlling
22 in that regard. I should point out that the facts of
the situation are, as were pointed out at the sentencing or
24 plea hearing, that a Special Notice was filed in an earlier

**PRE-SENTENCE HEARING
AND
SENTENCING**

PAGE 4

SEPT. 9, 10, 11 + 12, 1974

1 case. We had received a copy of that. Another Notice
2 was filed in January, I believe, of this year. At the
3 last Hearing on both, Mr. Davis and I indicated that we
4 had no knowledge of that particular matter, that the U.S.
5 Attorney indicated that they had either mailed a copy or
6 delivered a copy, and we took it on the face value of
7 that matter and that we did have the form as provided
8 for in the earlier case. I still to this day did not
9 personally have a copy of the Notice in this case because
10 as I understand it that that Notice is identical to the
11 previous one and as I see it merely recites the language
12 of the Statute and, therefore, be barred as sufficing
13 to give the Defendant notice of the "Tremante" case.

14 The second aspect of that argument
15 also goes to the question of where Notice was filed. It is
16 my understanding that this Notice was in fact filed with
17 this Court, and the Court was aware of it prior to the
18 entering of the plea of guilty. I point out that the,
19 not only aware of this Notice but aware of the notice in
20 previous cases. My understanding is that a sealed envelope -
21 I don't have the envelope or what was enclosed on the
22 outside of it - I expect it's in the record - indicated
23 that there was Special Dangerous Drug Offender Notice
24 therein; and when we came here for sentencing, I think I

**PRE-SENTENCE HEARING
AND
SENTENCING**

PAGE 5

SEPT. 9, 10, 11 & 12, 1974

1 made it quite clear to the Court that I was surprised
2 that was in this case; we had received no Notice of it,
3 and the Court called it to our attention and read it at
4 that time and it was made quite clear to the Defendant
5 that he would be subject to its potential decision if
6 he entered a plea. I do want to point out the factual
7 pattern in it because it was our position we arrived here
8 that day and into the - in fact we got into the Courtroom,
9 that no Notice had been filed in that particular action.
10 We feel, again, the "Tremante" case is controlling in that
11 aspect. If we believe the particularities of the statutes
12 alone, if we feel the due process, we get into some very
13 serious Constitutional questions and perhaps a greater
14 magnitude. I think perhaps a treatise on Constitutional
15 law could be written as to what's wrong with this statute.

16 The - one of the first I think, and
17 strongest arguments against it is that it violates the
18 Equal Protection clause of the Constitution.

19 THE COURT: Well, you referred to
20 the United States versus "Tremante" in your letter and
21 the Court has read the opinion as reported in Federal Sup.
22 What's been the history of that case since Judge Duffy's
23 opinion? Did anyone...

MR. GRAY: Your Honor, there is a

*PRE-SENTENCE HEARING
AND
SENTENCING*

PAGE 6

SEPT. 9, 10, 11 & 12, 1974

1 suggestion as Your Honor is aware at the end of the Opinion
2 that the Government take that up to the Second Circuit.

3 THE COURT: Yes.

4 MR. GRAY: I have had an opportunity
5 to discuss this matter with the attorneys involved in
6 the Southern District. It's my belief that the issue will
7 not be appealed by the Government for reasons - I don't
8 want to suggest that they have consented to or agreed with
9 it - but for other reasons they frankly don't think it's
10 an appealable order 849-H. It's the Government's position
11 that 849-H was designed to be an appeal from the imposition
12 from the sentence under Special Dangerous Drug Offender.

13 THE COURT: Where the statute was
14 invoked and applied.

15 MR. GRAY: When it is invoked and
16 applied and, for that and for other reasons not relating
17 to the accuracy of Judge Duffy's opinion, the Government
18 does not appeal. Now, I have no doubt that Mr. "Tremante"
19 is in the process of perfecting an appeal from his conviction
20 and it's entirely possible, in fact I think even likely,
21 that the 849 issue will be presented to the Court in some
22 manner as a result of the appeal from the conviction. I
23 can tell Your Honor how I think it will come up. Judge
24 Duffy, in that case, found that the Notice was filed

*PRE-SENTENCE HEARING
AND
SENTENCING*

PAGE 7

SEPT. 9, 10, H + 12, 1974

1 improperly. He also finds that the purpose of the
2 provision which tells how it should be filed is to protect
3 the Judge from being prejudiced by the fact a notice has
4 been filed. The obvious remedy of that so is not to
5 dismiss the notice but to set aside the verdict because
6 that was the remedy which Judge Duffy finds Congress
7 intended to give. You understand, there's nothing wrong
8 with the Notice, the notice proceeding itself isn't any
9 problem, but if there's anything wrong with the whole
10 proceeding it has to do with the conduct of the trial. I
11 don't want to suggest that I am stating what will be
12 the Government's position on that appeal. All I'm suggest-
13 ing is I'm sure Mr. "Tremante's" attorney will argue
14 on appeal that the procedure by which the notice was filed
15 tainted his trial, and therefore, I do expect there may
16 be some Second Circuit law on this issue and raised
17 in a rather oblique way but not by the Government.

18 At some point, Your Honor, and I'll
19 follow Your Honor's guidance with respect to when, I would
20 like to address myself to the "Tremante" case and to the
21 procedures that were followed in this case but perhaps, I
22 don't know if Mr. Langrock's...

23 THE COURT: Well, I didn't know but
24 what Mr. Langrock had made some investigation to find out

*PRE-SENTENCE HEARING
AND
SENTENCING*

PAGE 8

SEPT. 9, 10, 11 + 12, 1974

1 what the posture of the "Tremante" case was and whether
2 this particular point had been taken up to the Second
3 Circuit.

4 MR. LANGROCK: Your Honor, to be quite
5 candid with the Court, the first knowledge - sometime ago
6 we requested the U. S. Attorney's office to supply us
7 with any information they had concerning any cases where
8 this had been used. On the 30th of August a letter was
9 mailed to us which we received - I don't know the date of -
10 indicating the "Tremante" case. At that point we were
11 given only a docket number in the Southern District of
12 New York. We did not have the opinion, U.S.C.A., does
13 not yet include the opinion of the May Opinion as yet,
14 and the pocket parts, we do not ~~have~~ any information of the
15 full extent of the Hearing. We were primarily interested
16 in the "Tremante" case initially from the point of applica-
17 bility that this is only the second time in history that
18 they've used it, and it's against Ronnie RICH from
St. Albans. But we did receive this this morning. It's
the first time I've had a chance to read it and I certainly
accept the U. S. Attorney's opinion as to what has trans-
pired regarding it. We would be glad to allow the U. S.
Attorney to go into this point before we get into the
Constitutional issue. We think it's dispositive of the

**PRE - SENTENCE HEARING
AND
SENTENCING**

PAGE 9

SEPT. 9, 10, 11 & 12, 1994

1 case and the Constitutional questions are of quite a
2 substantial magnitude and dispositive on this basis.
3 On a "broader rink" (incoherent) we may not unless we
4 get into it.

5 MR. GRAY: Thank you, Mr. Langrock.

6 I don't take Mr. Langrock to be questioning our conduct
7 with respect to information given to him but I'd like to
8 make it clear on the record what transpired and how this
9 came about. I was aware of the "Tremante" case and
10 aware that an 849 Notice had been filed for a long time -
11 I don't recall when - following the newspapers I was also
12 aware of a New York Times article dated in early May and
13 it must have been about the time Judge Duffy wrote the
14 opinion, in which, from the content of which it appeared
15 that he had been in fact sentenced as a Special Dangerous
16 Drug Offender, because it says that, judge finds "Tremante"
17 quote, dangerous or said that he was dangerous and imposing
18 fifteen years. So I must confess that for a long time I
19 labored under the misapprehension that 849 had been in
20 fact been applied in that case. It was only August, I
21 think, 27th, when I was down in the Circuit Court on
22 another matter that I stopped by the Southern District
23 office as I frequently do to check on cases, talked with
24 the assistant on it, when he advised me of Judge Duffy's

PRE-SENTENCE HEARING
AND
SENTENCING

PAGE 10

SEPT. 9, 10, 11 & 12, 1974

1 opinion, and I might also note, Your Honor, that through,
2 I think, oversight it had not been sent to the Dangerous
3 Drug section of the Department of Justice so the department
4 is also unaware of it, and it was a unfortunate mishap
5 cause that certainly wouldn't have had this come up at
6 this point. If we had known - I didn't know it had
7 actually reached that Sup. until it was pointed out to
had
8 us yesterday, although I have been aware and have/posession
9 of the opinion for a couple of days and we certainly
10 didn't intent it should be a subject here.

11 Now, with respect to Judge Duffy's
12 Opinion, as I have indicated, I don't believe the
13 Government is going to appeal from it although I think
14 it may be an issue on appeal from the conviction itself.
15 Reviewing briefly the facts in which the Notice was filed
16 in this case, I should first say that the first Indictment
17 naming Mr. RICH was filed - there are several - which were
18 filed on, I think on the 30th of October. Shortly
19 thereafter, I think it was November 12th according to my
20 file I sent a copy of the Proposed Notice to Mr. Langrock
21 and Mr. Davis - I'm talking now about the first Notice.
22 I did not file it with the Court. I think you can see
23 for obvious reasons, I held it although I wanted them to
have as much notice as possible, I held it for a considerable

PRE-SENTENCE HEARING
AND
SENTENCING

PAGE 11

SEPT. 9, 10, 11 + 12, 1974

1 period of time. When - the original case is set for
2 trial in January. I did file the Notice with this Court
3 but not with Your Honor. We followed our usual procedure
4 of sending everything to the Clerk of the Court. I don't
5 suggest that Your Honor wasn't aware of it because Your
6 Honor was aware of it. I think that the procedure set
7 forth in 849 for the filing of a notice frankly is very,
8 very difficult to follow in a district such as this. I
9 would come to later in my remarks to what I think is the
10 import of the procedure that was followed. What I've
11 just given..

12 THE COURT: I think as I recollect it,
13 Mr. Gray, one of the co-defendants in an earlier case
14 was about to go on trial.

15 MR. GRAY: As a matter of fact,
16 Mr. RICH's, Mr. Ronald RICH'S trial would also have been
17 set on 73-99.

18 THE COURT: One of the indictments
19 that...

20 MR. GRAY: It's one of the other, in
21 which he was named with Gary RICH and Richard PYE. That
22 was scheduled for trial in January and it was about that time
23 that we determined that we would supersede, put all
24 Ronald RICH'S charges in one indictment and file an

PRE-SENTENCE HEARING
AND
SENTENCING

PAGE

12

SEPT. 9, 10, 11 + 12, 1974

1 indictment which also contained Count 10, a charge of
2 violating 848 of Title 21, but which is not this statute.
3 It was , 848 is the one which has many of the same ele-
4 ments but requires that the case be presented to the
5 Grand Jury and it also contains different penalty
6 provisions.

7 I don't recall specifically the dates
8 on which the second Notice was filed and I know that
9 Mr. Langrock and Mr. Davis and I had some discussion of
10 this at the time of the plea. I am confident that not only
11 was it a notice, some manner provided them, although I
12 don't think it important at this point to go over that.
13 But again, I followed the same procedure, by filing
14 with the Clerk of the Court because I really didn't,
15 there weren't really that many avenues open to me, but,
16 of course, Your Honor was aware of it, and in fact
17 Your Honor caused it to be sealed shortly thereafter
because another part of 849 which suggests that somebody
should seal it for publicity purposes.

THE COURT: I think there's a
reference in 849 that the Court feels it might be preju-
dicial and should order it sealed.

MR. GRAY: It's very difficult,
certainly in a one-judge court it would be impossible to

SEP 11 1974

PAGE 2

ARGUMENTS OF COUNSEL JUST PRIOR TO SENTENCING - ONLY

1 THE COURT: Pursuant to an agreement of
2 the Government and the Defendant and counsel, the Court has
3 approved and assigned an order which makes available for con-
4 sideration in this sentencing hearing, the testimony of various
5 witnesses who appeared before the Grand Jury in this and related
6 cases and the Court will receive those. Does the Government
7 have any at this time?

8 MR. O'NEILL: They are here, Your
9 Honor.

10 THE COURT: The Court will receive
11 those and read them. (Handed same to the Court). Following,
12 - at the next recess.

13 MR. O'NEILL: Your Honor, also included
14 is the - one part of the D.E.A. report that is referred to
15 in the order also.

16 THE COURT: Very well. We will re-
17 ceive that. I understand that's in connection with the testi-
18 mony of some particular witnesses?

19 MR. O'NEILL: Yes, Your Honor, I think
20 that perhaps that it might be appropriate for the Government
21 or Mr. LANGROCK if he wishes to speak also to some aspects of
22 this. Your Honor, the reason we have included the statement
23 is because that in going over this and they are in chronologi-
24 cal order, I believe, the testimony of the various witnesses,
the Court will, of course, note some inconsistencies between
the first time some of these witnesses testified and the second
time. We feel the Court should draw whatever inferences as to

SEP 11 1974

PAGE 3

1 credibility it so desires from these. And, but the court may
2 note that with respect to the number of people, they testified
3 once, they changed the testimony on subsequent occasions.

4 With one particular individual on whom the interview with DEA
5 is reflected in that report, sought to again come before the
6 Grand Jury to again change his testimony. However, for a
7 number of reasons, basically related to time, physical location
8 and so forth, he was never given an opportunity and the parties
9 have agreed that the DEA report may be given to the Court for
consideration. That was a subsequent interview -

10 THE COURT: Very well, the Court now
11 the Court also has a written stipulation of the parties which
12 expresses their agreement for the purposes of this hearing,
13 that certain witnesses called by the Government would testify
14 to fact concerning material assembled and gathered by the
15 Internal Revenue Service concerning the net worth of RONALD
16 RICH and LINDA RICH for the period December 31st, 1972 through
17 October 18, 1973. Is there anything further at this time?

18 MR. LANGROCK: Well Your Honor with the
19 two stipulations I think I should remark one is we, by coming
into Court, have obviously admitted our involvement, -

20 THE COURT: Surely.

21 MR. LANGROCK: - on the drug matters.

22 We don't agree that or with every particular instance there,
23 there are certainly exaggerated instances in there and I
certainly don't want to try each individual case. I think those
depositions do give an overall position or picture of the fact

SEP 11 1974

PAGE

4

1 that my client was involved and in the drugs with these other
2 people, they have all been before the Court for that. But as
3 far as the income again, we don't want the Court to draw any
4 inferences that all of this money was made in the drug traffic.

5 THE COURT: No.

6 MR. LANGROCK: That there was some
7 gambling, there was some work, (mumbling, inaudible), - we
8 readily admit that some money was made from the sale of drugs
9 but we just don't want the matter taken too literally. We do
10 feel that they do give insight to the Court which will be useful
11 in this case.

12 MR. O'NEILL: Your Honor, we would
13 basically agree with what Mr. Langrock said there. The only
14 other thing I would wish to indicate and I think we do agree on
15 this, is that with respect to the figures given to the Court,
16 these are the figures as the witnesses would testify.

17 THE COURT: The Court understands that
18 the testimony would be to this effect and we are also mindful
19 that it would be subject to cross-examination or any explanation
20 that might be given.

21 MR. LANGROCK: We don't mean to dispute
22 the figures but there are other reasons why the money could
23 have come in, both legitimate and otherwise.

24 THE COURT: Very well. Does the
25 Government have anything further to present?

26 MR. O'NEILL: No, we don't, Your Honor.

27 THE COURT: Mr. Langrock?

SEP 11 1974

1 MR. LANGROCK: Yes, Your Honor. At
2 this time, I would like to present an overall picture which
3 we feel, in the sentencing procedure, or unless you feel it is
4 not timely in the sentencing procedure to do so.

5 I think it may be, my approach would
6 be useful in the Court's extraneous matter if the Court will
7 bear with me on it.

8 We have gone through a day and a half's
9 hearings here, and as far as I am concerned, on the fact of it,
more
nothing/has been proven to what my client has pled guilty to.
10 I spent a lot of time thinking about this case and in trying
11 to figure out how or why or what made the presentation of
12 Ronald Rich's case so much different from the Government's
13 standpoint of view than various other cases that have already
come before this Court.

14 I think the U.S. Attorney's office is
15 trying to be totally conscientious in presenting the matter to
16 this Court. I think that there is some overkill on their
17 standpoint and I don't want this Court to take this matter out
18 of perspective simply because of the fact that the U.S.
19 Attorney's office has tried to initiate the serious indictment
or dangerous drug offender situation.

20 I think you have to go back to and try
21 to come to why we are here. In the fifteen years practice of
22 myself both as prosecutor and as defense counsel I have never
23 been involved in a sentencing hearing anywhere near as involved
24 as this. I have never run into some of the situations I have

SEP 11 1974

PAGE

6

1 here. And I feel perhaps that part of the problem may lie with
2 me. And, I have represented Ronnie, as this Court is aware,
3 since 1965 and I argued a case before Your Honor serving on the
4 Vermont Supreme Court as Chief Justice and the fact is that
5 Ronnie, over the next eight or nine years, has been in and out
6 of trouble.

7 If you look at the record that the
8 pre-sentence investigation shows, it's all minor trouble.
9 It's motor vehicle trouble. It's fights with the police,
10 specifically, there's a great deal of these cases that involve
11 Stanley Merriam. But I think there's one petty larceny where
12 he stole some gas from a farmer's pump which was a jury trial.

13 The, - I think if you look at that,
14 you will see a course of police conduct which is not the same
15 as would be given to the ordinary citizen. The Stop sign.
16 Leaving a package on the highway. Which happens is an antagon-
17 ism, anti-social relationship between Mr. Rich and the police.
18 And I am afraid that I may have entered into part of this be-
19 cause feeling, I think quite strongly, initially in my relation-
20 ship with Ronnie, that society had treated him less than fairly
21 and I maybe have been over-protective of him in some ways and
22 the law sometimes becomes a contest between, too often, between
23 the prosecutor and the defendant's counsel and the defendant
24 sometimes gets lost in the middle. And I, - I, - I feel that
this may be part of the explanation of the fact that Ronnie
would get into minor trouble, that I would go to bat for him
and some other people would go to bat for him and get him

HERMAN J. VESPER
COURT REPORTER
P. O. Box 777
BRATTLEBORO, VERMONT 05301

55

SEP 11 1974

PAGE

7

1 around the situation and it would lead on to the next one.
2 To another one. It was a progression of this. And I think
3 that this is part of all of it.

4 If you will look at the cold hard facts
5 of the case, Ronnie is no different than the other people that
6 have been before this Court. His brother Gary, - I think the
7 whole testimony in this thing was that Gary was the principle
8 dealer, or at least it indicated that Gary was the principle
9 source, was the person that got involved in it. That there
10 is no indication here that there were a greater number of trans-
11 actions by Ronnie than anybody else. There is some indication
12 in the files that Mr. Cunningham in fact was a bigger dealer.
13 Mr. Bushee, Mr. Schofield, were certainly involved in situations
14 which were far more dangerous, in fact involving fire arms,
15 involved in other matters than my client. Mr. Pye, Mr. Beebeau,
16 I think probably would fall on the other side of the line.
17 PYE probably is the (mumbling) - but the Court's aware of this.

18 But we had a great, - a difficult
19 situation in St. Albans and in trying to piece them together
20 as to what happened to my client along with some other people,
21 obtained a contact in Montreal, where they could purchase some
22 "Speed". And they purchased it at various times and made some
23 money at it.

24 The, - in making, - you have to look at
25 each individual situation. What is Ronnie, as a human being,
26 involved in this? What, - what, - he's a married man. He's
27 not a perfect married man. He's got a youngster with some

SEP 11 1974

1 tragic health problems but as a whole, he's been a pretty
2 good father.

3 This is not money that he's made that's
4 been spent, you know, in wild pursuits, but what he's done,
5 the basics showing in the Government's case, this money went
6 into a home. But sure he's had a fancy car and he's done some
7 things, but he basically is a pretty simple guy. And, he'd
8 like to be a success. He'd like to be somebody. As most of
9 us would be. And what avenues are really open to him for suc-
cess?

10 The unfortunate part is that he made
11 the basic mistake of staying in St. Albans. His father,
12 Warren Rich was, - goes back in to the Vermont Supreme Courts,
13 robbery cases, for many years. He died on his way to Leaven-
14 worth. There is, - some of his brothers had sense enough
15 to get out of the St. Albans area. One of them, another one
16 of them didn't. That's Gary, now doing time in connection with
17 the Federal Drug charge.

18 And Ronnie, - Ronnie's probably biggest
19 problem, is that he is too boisterous. Too antagonistic
20 toward the police and this is where I feel some possible
21 responsibility. The, and, and having no other avenues, of
22 succeeding, he picked the illicit avenue.

23 Now, this is the first time in Ronnie's
24 life where he's ever come face-to-face with a serious criminal
charge. Where he's facing a serious possibility of long-term
incarceration. And, and, and, I think that that fact should be

SEP 11 1974

1 kept in mind.

2 It is very easy to move over to the
3 Government's situation and accusation that he's the biggest
4 and the worst. Ronnie's a guy with a 95 I.Q. He, he's a
5 fellow who responded to give the environmental situation a
6 stimulus in a fashion which could be readily predictable at
7 that point. I, I might add in talking to Ronnie, that I asked
8 him quite directly, what, you know, what's going to happen
9 when you get out of prison? I mean is this, you know, some-
10 thing that you're going to get back in to? And his reaction
11 is, no, he said, you know there is one thing I am going to do
12 is get out of St. Albans. And I think that this would solve
13 most of the problems.

14 In looking toward the sentence, it
15 seems to me that Ronnie has to be given the opportunity, as a
16 human being, to make up for his mistake. That he should be
17 given an opportunity to make a life for himself and for his
18 wife and child, who can be expected to stay with him if there
19 is hope, but if he is put away for a long period of time, not
20 to.

21 *op n
Lerner* "The, you know, I, I, in this case, as
22 I made representations to the Court and in the plea, my client
23 realizes he might as well expect the maximum sentences on
these counts, that I did not, in my opinion, feel that they
would be served consecutively, but that he could expect the
maximum."

24 I feel very funny arguing that,

SEP 11 1974

PAGE
10

1 because I feel that, almost like arguing for probation and I
2 don't think it is facetious. If this were a little different
3 situation, a first offender doing this, there might be.

4 I think one important thing though,
5 which goes away from that and that is that Ronnie should be
6 incarcerated for a period of time sufficient to break off any
7 contacts that he may have in the drug field. So that when he
8 comes out of jail, the temptations to make money, to try to
9 provide for his family in a more than adequate fashion, are
gone.

10 He is, the, - you know, we live in a
11 world where we talk about equal justice and all I ask for is
12 that Ronnie be treated equally with the other defendants in
13 this whole scene. Perhaps equally with other people.

14 And, and I point, you know, - perhaps
15 I am too emotionally involved in this case and have seen too
16 much of it, I realize that the U.S. Attorney's office and the
17 D.E.A. people had nothing to do with some of the problems in
18 St. Albans. That the, - that as a matter of fact, in talking
19 to them individually, both the U.S. Attorney's office and the
20 D.E.A. would like nothing better than to destroy the operation
21 of the one Paul Lawrence, but that, that's fine for the Court
22 for them to say, but my client is not having any battle with
23 D.E.A. or the U.S. Attorney, perhaps he is having a battle
24 with society and when he, he is picked up off the street,
forced to spend his last resources to try and make bail, for
an alleged street sale of heroin, for which, the D.E.A. people,

HERMAN J. VESPER
COURT REPORTER
P O Box 777
BRATTLEBORO, VERMONT 05301

SEP 11 1974

1 (mumbling), you know, doesn't make sense at all, and which has
2 since been dropped, the officer has been prosecuted for it.
3 Which you, you, you, you go to your client and you say, "Yes,
4 Ronnie, you know there is justice, there really is a true
5 Santa Claus somewhere," and yet he has, here, he has lived
6 through what he sees to be the grossest form of injustice.

7 You go back to the days when he was
8 sixteen, in a State prison, as the Court knows, transferred,
9 we believe illegally, but not a, not, that's not the point
here, but at sixteen he was taken and thrown into a cell in
10 death row = after being stripped naked, and beaten. The beating,
11 of course is not important, because he is a healthy fellow, but
12 the indignities imposed upon a sixteen year old boy, the prob-
lems of having a father with his record, you know, you, you,
13 you can't change the world to suit Ronnie Rich and he's got to
14 learn that. But you can't, at least I can't, help but feel
15 that society has a certain moral responsibility in having
16 mistreated and you know, it's not the type of thing that any
17 child should have, and, and, with, from this background, you
18 can see a natural distrust for authority. A natural distrust
19 and not an irrational one. Ronnie's actions have been rational.
20 And I believe that, if given a chance, that in the future he
21 will be rational. At least that this is not a dangerous man
22 that is out robbing banks. This is not a, - this is a guy who
23 entrepreneur, along with a lot of other people. Illegal one.

24 You know, the Speed situation, - I read
in the paper where a doctor down in New York was treating

SEP 11 1974

1 senators, top-flight politicians, with the same substance in
2 Vitamin B-12 shots. You know, you read that at one side of
3 the point, you read other things. This is not a heroin addic-
4 tion. This is a problem. I'm, I'm not trying to peddle it
5 down. But it, it is, - it must be kept in some sort of per-
6 spective and for him, there is a ready market, with people
7 making demands upon him and he, he fills it, and he, he, he,
8 he's got to learn that there are certain things in society you
9 cannot do. But on the same token, you, you can't say that
10 this is a totally void act, that what would, - all of the
11 motivations were bad and what-have-you. He was, acting in a
sphere, in an area where he had no other choice.

12 I, - you know, it's, - it's very easy
13 right now, to point to great personages in our country and
14 make arguments for equal justice. I, I think that does not
15 carry a great deal of weight in this sense, but, but it does,
16 - when, - when I go back to my client and after this Court
17 fills the sentence, I, I want to be able to say to him and
18 have him say to me, you know, I was wrong, - he's already said
19 that by coming in here. I, I want to be able to say that,
20 you know, to society, I, I get punishment. I, I'm no worse
21 than a lot of other people. The punishment I got is commensur-
ate with those.

22 Now, the, the, - the only argument, or
23 the question that's come up in this case and the only thing
24 that we are concerned about, and I advised my client, is the
question of a potential consecutive sentence.

*Pursuant
to
law
and
policy*
SEP 11 1974

1 The Court, as we readily recognize, has
2 the power to impose consecutive sentences. We think, Your
3 Honor, that that would be in violation of the congressional
4 policy in this matter, and violative in the general sentencing
5 policy of this Court, or any Court that I have been involved
6 with, because I have never had a consecutive sentence issued
7 out.*

8 I'd like to point specifically to the
9 statute, which is I think, 841, and point to the fact that the
10 basic structure is, that the first time a person is involved
11 in a matter, Congress has set five years as the maximum penalty.
12 The worst offender approach, or the sentencing is that the
worst offender within that realm.

13 The fact is my client has pled guilty to
14 four counts and therefore, he is subject to a longer time.

15 Now I suggest to the Court that there
16 is not a single person in this whole St. Albans situation, who
17 the Government could not prove more than one count and be put
18 in the same situation. That the fact really here is, we have
19 here really one continuing enterprise and that this is what
it comes to, the fact that he's pled guilty to three counts,
20 four counts or seven counts, is a matter of choice of the
Government and not a matter of policy.

21 The second part of that statute, calls
22 for a person who has been convicted and finally, and it talks
23 in terms of final conviction, that then the penalty doubles.
24 And it seems to me there's a plain congressional intention in

SEP 11 1974

PAGE

14

1 this case, that he, - that the idea is, that if a person gets
2 involved it's a serious, - five years is a serious penalty,
3 as this Court knows of it, that the second time if after he's
4 been caught once, if Ronnie goes back, then a ten year penalty
5 is appropriate. But we think that the plain congressional
6 intent here, and there are cases, you know, which uphold con-
7 secutive sentences and I think that most of those probably for
8 ulterior purposes for people in Maffia situations. I don't
9 know the pre-sentences. But we have here, you know, is not an
10 organized case or an organized gangster with a family. What
11 we've got here is a kid from St. Albans who never had a break
12 and became in real trouble with society and deserves the pun-
13 ishment, but we, we're not talking about a major criminal life
14 by any means.

A.U.V

I would also point to the A.L.I. model
14 sentencing code, which I think expresses the general sentencing
15 policy and that, when it talks about consecutive sentences,
16 this is under Section 706 which is found in Appendix "B" of
17 the A.B.A. sentencing alternative procedures, and it talks
18 the aggregate of the consecutive fits in their scheme in
19 definite terms, shall not exceed in maximum length of the
20 longest extended term authorized for the highest rate or
21 degree of crime for which any of the sentences approach. And
22 so what we are talking about is the - the whole structure
23 there. The whole structure in the treatise is also another
24 appendix, I believe, Appendix C, talking in multiple charge
cases from the, - I've forgotten the particular document, of

SEP 11 1974

1 the model sentencing act, derived by the, the Advisory Council
2 of Justice of the National Crime Delinquency which favors
3 concurrent sentences and all I am arguing for here for Ronnie,
4 as I have since the inception of this proceeding, and that
5 is, that the Court treat Ronnie's activity as a single course
6 of conduct, that it place the sentence at whatever it feels
7 appropriate and that he not be subjected to a longer sentence.
8 That's serving sentence with the maximum penalty for one of
these counts.

*Ordering
for my
go/ict*

9 We have a special term of parole which
10 is imposed upon it. You know, that, I don't care Your Honor,
11 if you make that for the rest of Ronnie's life, because if
12 Ronnie screws up again, then society, you know, there comes a
13 point where society's responsibility to Ronnie and Ronnie's
14 responsibility to society, turn around. I think that it
15 probably has turned around already. Ronnie's reached that
16 point. But perhaps this is the first time that that's hap-
17 pened. And it seems to me that at this time that Ronnie should
18 be given the chance to at least to have some hope for making
a life for himself in the future.

19 I, I, could, you know, I could, - I
20 want to cut this short, Your Honor, because this is, - Your
21 Honor is well aware of the fact on the pre-sentence. I under-
22 stand that and have told my client that there is certain infor-
23 mation in the pre-sentence which is of a confidential nature,
24 that we don't know. We understand that this is, - that he is
aware of it that that is a proper matter, but given the

SEP 11 1974

1 information that we are aware of, we feel that it does portray
2 an accurate picture of this matter. We do recognize that
3 incarceration is absolutely necessary in this case, to break
4 off criminal contacts." We would hate to see this man who has
5 met so many problems, which, which are not of his own making,
6 necessarily, by society, totally destroyed by a long period of
sentencing."

7 His wife is here, with a youngster with
8 severe medical problems and we would like to see the possibil-
9 ity that maybe some day Ronnie will put his energies to a
10 productive situation a long way from St. Albans where he
11 could be a positive force of society which to date, both
Ronnie and society made mistakes with each other.

12 THE COURT: Does the Government have
13 anything to offer at this time?

14 MR. O'NEILL: Yes, Your Honor, I don't
15 expect to be quite as lengthy as Mr. Langrock but I would like
16 to make a few comments because I do feel some aspects of what
17 he said should be responded to.

18 Your Honor, we recognize the fact that
19 our view point and that of Mr. Langrock with respect to what
Ronald Rich's position, are of course, substantially different.
20 We get our information from one source, he receives his from
21 another. In addition, ours is an adversary system which is
22 based exactly upon that mode of operation.

23 Your Honor, it is our contention, and
24 we feel properly so, and I know that Mr. Langrock feels it is

SEP 11 1974

PAGE

17

1 properly so when he says it also, of course, that the evidence
2 before the Court, in terms of the Grand Jury testimony, what's
3 been said through all this time up until now, shows basically
4 a pattern of an individual who, over a period of time, became
5 involved in trafficking in a substance known as methamphetamine
6 which is something he got into, perhaps, on a gradual basis,
7 and then for one reason or another, perhaps it was because he
8 was lucky, perhaps he became, - he had special expertise, or
9 for any number of reasons, there came a point in time where he
10 was very successful in this business. It came to a point
11 where numerous people were dealing with him. This is not to
12 say that other people in the area were not also dealing, but
13 it is our position, that people in the area were not dealing
14 without at least his consent.

15 We do feel that most of the operations
16 involving the upper echelons of distribution of methamphetamine
17 in northern Vermont and in some instances, even further south
18 than that, were in at least some way under his direction. This
19 is not to say all of them, but at least in something that he
20 was aware of them.

21 We feel that the, at least in the
22 Burlington-St. Albans area, in most instances, were under his
23 direction, or direct supervision, so to speak.

24 Now, there certainly were other people.
25 Thomas Bushee, for one, who were doing - dealing in substances.
26 Jeffrey Cunningham is another one. We dont' feel that the
27 scale is anywhere near what is shown here, however.

SEP 11 1974

1 In addition, Your Honor, each of these
2 individuals, including his brother Gary Rich for that matter,
3 dealt in quantity here or quantity there but at no point did
4 they ever have the network which we believe the evidence shows
5 that Ronald Rich had. A network of contacts in Canada, which
6 went, we believe, to the source to an individual in Toronto who
7 made a - had an operation which could make up to fifty pounds
8 of methamphetamine within eight hours. Some of the methampheta-
9 mine came directly from there, Mr. Rich at least had some
10 contact with them. I don't know whether he had ever met him
11 or not, but we do feel that the operation was of this nature,
12 that in viewing the context of the State of Vermont, Your
13 Honor, Mr. Rich, in the point in time that we are referring
14 to, was in our opinion, absolutely, clearly the most serious
15 drug offender in the State of Vermont. We dont' contend there
16 were no other serious ones, nor do we contend, and I think that
17 this is significant, that ^{if} ~~Mr.~~ Ronald Rich had been in Boston,
18 New York or some other large city where there is a significant
19 drug problem, that he would have been the head man there. We
20 don't contend that either, Your Honor. We feel that this is a
21 matter of proportion. As far as the State of Vermont was
22 concerned, Ronald Rich was the problem. For one reason or
23 another, the State of Vermont had not been able to catch
24 Ronald Rich engaging in distribution.

Now, part of the trouble may have been
as some of the testimony came out, that Ronald Rich indicated
that he wouldn't discuss prices, he never touched the stuff,

SEP 11 1974

1 Some of the testimony that the Court has heard was that people
2 were always doing things for him,. For whatever reasons, the
3 resources of other agencies have never been able to do it.
4 The Drug Enforcement Administration put their resources into
5 it. And if they thought that it was worthwhile to do so, and
6 we do feel that Ronald Rich was the most serious drug offender
7 in that area at the time and the distribution being what it
8 was,

Now, we've talked somewhat about,
briefly about the operation level that he had. The number of
people with whom the Court has been given Grand Jury testimony
concerning, some of which I am sure is to a degree, self-serv-
ing, but nevertheless, all of these people in one manner or
another, had contacted Ronald Rich. There is testimony con-
cerning large sums of money in cash that he was in contact
with. He talked about his gambling too, of course, but the
pattern of an individual who over a period of time managed to
put himself into a position where he, himself, was not the
man who ever dealt. None of our agents can ever say that they
ever saw Ronald Rich touch a controlled substance. There is
no question about that. None whatsoever. But at the same
time there is no question that Ronald Rich was dealing in
controlled substances. For him to be in a position where he
wasn't touching it himself, some degree of organization
obviously, was required. And to the importation and distribu-
tion network that was here, while it may not have been one that
24 was the most highly organized in existence, it certainly had a

SEP 11 1974

PAGE 20

1 good network that was involved in it.

2 Now, Mr. Langrock has spoken about the
3 course of police conduct and the antagonism which has existed
4 between Mr. Rich and the police. I did note that Mr. Langrock
5 did use the term antagonism between Ronald Rich and the police
6 and not necessarily on one side or the other. I am sure that
7 there would be some differences on both sides with respect to
that.

8 We do realize the sociological back-
9 ground that Mr. Rich has come from. We realize the problems
10 that he has had. However, this does not take away from the
11 role that he has played in society here. The distribution of
12 these substances over a long period of time.

13 Now, in connection with that, I would
14 like to note one thing in respect to the methamphetamine,
15 Your Honor, Methamphetamine is still the drug of choice in
16 this country. The Court may have noted that yesterday that
17 a hundred and two indictments were unsealed, dealing with
18 something called mini-banks, which are a lesser stimulant than
methamphetamine, in a nation-wide crack-down.

19 Now, methamphetamine at the present
time and to some degree cocaine, is the drug of choice.
20 Methamphetamine, however, in some sense is much more dangerous
21 than heroin. Not in all, but in some senses. The basic sense
22 that I am referring to is that it is of course, addictive,
23 although perhaps not to the degree of heroin. However, an
individual high on Speed suffers a greater likelihood in the

HERMAN J. VESPER
COURT REPORTER
P. O. BOX 777
BRATTLEBORO, VERMONT 05301

SEP 11 1974

1 in the short run, of physical disability by virtue of the
2 possibility of heart damage or something of this sort, when
3 coming down off of it.

4 Now, we do hear of instances of course
5 of long-range damage of both, but of course the one thing we
6 do wish to indicate is Speed is a very, very significant prob-
7 lem no matter what context it is used in.

8 Your Honor, the only other thing that
9 I would like to touch upon, perhaps one other aspect and I'll
10 go back to one thing to Ronald Rich's position he has been
11 in. Mr. Langrock gave the background of family and so forth.
12 Perhaps the one thing that can be said is that admittedly
13 Ronald Rich has been in trouble, Gary Rich has been in trouble.
14 This cannot be said for a lot of the family. Now it may be
15 that they were in different position within the family or
16 something of this sort. This may account for it. But nevertheless,
just simply went wrong, so to speak.

17 The last thing I would like to touch
18 upon, Your Honor, is the discussion that Mr. Langrock had with
19 respect to equal treatment. We of course firmly believe that
20 the Court should treat all persons who come before it equally
and we know that the Court would so feel itself, obviously.
21 Mr. Langrock has spoken somewhat and has indicated at prior
22 times that he has given his professional opinion, and I am
23 sure Mr. Langrock will correct me if I mis-state this, uninten-
24 tionally, to Mr. Rich, that he doesn't believe the Court will

SEP 11 1974

1 impose consecutive sentences.

2 Now the Court I know, very thoroughly
3 when it took the plea of guilty in this case, inquired of Mr.
4 Rich whether or not he understood that Mr. Langrock's opinion
5 notwithstanding, that the Court could well, if it so desired,
6 imposed a period of nineteen years.

7 " Your Honor, I have so indicated in con-
8 versations with Mr. Langrock at various times, that we would,
9 our office would find it inconceivable that the Court would
10 sentence Ronald Rich to less than some type of consecutive
11 term. This is not to suggest that the Court Will sentence him
12 - Mr. Rich, to nineteen years, of course, we have no way of
13 knowing what the Court will sentence him to, but just in terms
14 of indicating that we have discussed this question, and our
15 opinion of course is considerably different and we have no way
16 of knowing what the Court will sentence him to, but nonetheless
17 in terms of equal treatment we would find it inconceivable for
18 him to receive a sentence of simply five years."

19 Now this is, as I say, I am not trying
20 to suggest what the Court will sentence him to, or what the
21 sentence should be, but I do feel that the record perhaps
22 should be straight in that respect.

23 Other than that, Your Honor, we would
24 leave, so to speak, the record as it sits here. We think that
the Court is very capable of, obviously, of examining all of
the evidence and arriving at what it feels is the proper
disposition. We feel that there is more than what might be

SEP 11 1974

PAGE

23

1 described as a single course of conduct here.

2 It is in a sense perhaps, a single
3 course of conduct but it is a single course of conduct over a
4 substantial period of time. It's not as though for a period
5 of one month, Ronald Rich fell into the area of distribution
6 of methamphetamine.

7 We feel this is the A.L.I. and the
8 National, N.C.C.B. talks about such things as consecutive
9 sentences, they are normally referring to a situation of an
10 individual who is picked up for isolated instances perhaps of
11 a number of them. Nothing of this series or magnitude, so to
12 speak, and we do feel that this must be viewed in that sense,
13 much more than an isolated incident, but rather a continuing
14 series of conduct over a substantial period of time in detri-
ment to society, which depending upon how the Court should
view various aspects of it as highly substantial.

15 THE COURT: Mr. Langrock?

16 MR. LANGROCK: I would like just very
17 briefly to respond. This is the first time in my practice that
18 the U.S. Attorney's office has made any such a statement recom-
19 mending a particular sentence, at least in excess of five
20 years or the maximum. And the fact that we have an audience
21 here composed of D.E.A. people who have worked hard on this
22 case may have had some significance on this, particularly and
23 I do, (mumbling). I cannot try Bushee. I cannot try Schofield.
24 I cannot try Cunningham. I cannot try Gary Rich to prove that
they are just as bad. And, and it is an unfair, - what we are

SEP 11 1974

1 talking about here is one guy. We have not tried to down that.
2 There is not a single thing that was pointed out to the U.S.
3 Go vernment that we disagreed with in the fact pattern of
4 Ronald Rich. But we do want to point out though that this man
5 has an I.Q. of 95. The reason perhaps that he didn't handle it
6 himself was because that he thought it wouldn't be illegal if
7 he didn't. That's how sophisticated he was. And, and, and,
8 if they are trying to convince this Court that we have here a
9 sophisticated network, they brought people in and I think that
10 they had an arrest within two weeks after they started issuing
11 procedures, well, May, was the earliest time, I guess they
12 came in for Ronnie. And I, I, I, - I, I just think this
13 matter must be put back in perspective. They say he is the
14 most serious in Vermont. There is no proof of that and I dare
15 say that any agent by rumor or otherwise, would be a lot more
16 probably serious. I suggest that he was/the best known in Franklin
17 County and that I suspect was, that I was partly responsible
18 for. And I would hate to see him sentenced on that alone.
19 Thank you.

20 THE COURT: The Court will -

21 MR. O'NEILL: Excuse me, Your Honor.

22 THE COURT: Yes.

23 MR. O'NEILL: I'm sorry to interrupt
24 the Court but I would just like to have the record reflect
just one thing which is specifically, Mr. Langrock seems to
take my remarks as being a recommendation. I in no way in-
tended it as a recommendation and the Court I am sure,

SEP 11 1974

PAGE 25

1 understands. And I would just like to have that clearly under-
2 stood. The only thing that I do feel is significant is that
3 Mr. Rich's, pardon me, Mr. Langrock has indicated what his
4 position is with respect to his advice to his client was and
5 how he can't conceive of it, well, the same way applies for
6 us. We do not however in any sense mean to try or bind the
7 Court or have it as a recommendation. Obviously, whomever
8 my audience is, so to speak, makes no difference whatsoever.

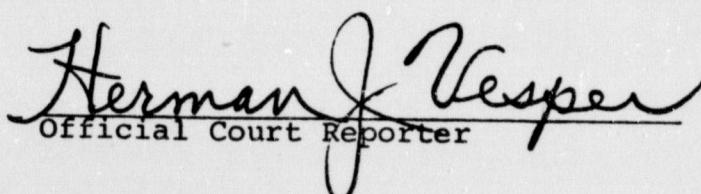
9 THE COURT: Well, the sentencing pro-
10 cedure is somewhat unusual to the Court and I am sure that it
11 has seemed so to counsel and the Court has allowed considerable
12 latitude in the context in which the case came to the Court
13 and in the first instance and in which it now stands. It is
14 one that makes it unusual in many respects. There is eviden-
15 tiary material that has been submitted that will take the
16 Court some time to examine and evaluate and in view of that
17 circumstance the Court will recess at this time and resume
18 at 9:30 tomorrow morning.

19 (11:40 A.M., 11 September 1974, adjourned until 9:55 a.m.

20 12 September 1974, at which time it was recon-
21 vened).

22 CERTIFICATE

23 I hereby certify the foregoing is a true and complete trans-
24 cript.


Official Court Reporter

25 Rutland, Vermont

26 18 September 1974.

SENTENCING - ONLY

SEP 12 1974

PAGE

2

1 THE COURT: Before proceeding to the
2 question of the matter of sentencing in this case, the Court
3 will inquire, has, - have you, Mr. RICH, had a chance to go
4 over the pre-sentence -

5 MR. RICH: Yes, I have.

6 THE COURT: - report that has been
7 prepared?

8 MR. RICH: Yes, I have.

9 THE COURT: And I was mindful that
10 counsel had seen it and examined it with thorough detail, as
11 they have every aspect of this case, are there any corrections
12 or changes in that report that you wish to offer to the Court
13 at this time?

14 MR. RICH: There's a lot of things
15 that I don't, - I disagree with it.

16 THE COURT: Well, is there any factual
17 statements that are incorrect?

18 MR. LANGROCK: Well perhaps, Your
19 Honor, he has discussed them with me and I think that I might
20 point out that, for instance, there is a reference in there to
21 a paragraph where he accosted some officers, in the -

22 THE COURT: What page do you have
23 reference to?

24 MR. LANGROCK: I believe, on page, -
25 the bottom of page 5 and top of page 6. The case, - that was
the situation where we argued at the time and I still believe,
where Mr. RICH was singled out for activity and attention by

SEP 12 1974

1 police officers and rather than he giving them a hard time, he
2 was worked over in pretty good shape. The situation ended up
3 in a plea to a lesser offense with a very minor penalty, because
4 the economics and the realities of bringing any action against
5 the police officers, (mumbled), other than that, the factual
6 background, other than that, is our position.

7 THE COURT: Well, the Court read that
8 matter and while Mr. PICHER is thorough in every detail in
9 preparing his report for the Court, he was faithful to that
pattern in this case, -

10 MR. LANGROCK: Uh huh.

11 THE COURT: - however, I will say
12 that the difficulties that the Defendant has had in regard to
13 local police matters in St. Albans is not a matter that the
14 Court attaches great significance to, in fact, I have minimized
15 it in my own mind and, because I don't know all of the details
other than that which has been reported.

16 MR. LANGROCK: Yes, Your Honor, I
17 would suggest that that was probably the official version and
18 we certainly don't, - I, - I have not related that to Mr.
19 PICHER and my client, in fact, felt more strongly about the
20 point than I have because I thought it was all part of the
position that we tried to take. Is there anything else?

21 MR. RICH: No.

22 MR. LANGROCK: Nothing in real sub-
23 stance, except that type of situation.

24 THE COURT: Well, other than these
local difficulties that you have experienced in St. Albans, Mr.

SEP 12 1974

1 RICH, I take it that the report is accurate and correct?

2 MR. LANGROCK: There is one other
3 thing that was also in there , again a local matter and again
4 the official version that Mr. RICH was caught while breaking
5 into a garage, in fact, he was present, there was never any
6 charges, there was never any convictions at all, nothing came
7 out of it and all charges were eventually dropped on it. He
8 was asleep in a car when somebody else had done it, but he was
9 present. This is again, the official version again as related
by Mr. PICHER.

10 THE COURT: Very well. Very well.

11 MR. LANGROCK: I think that, does that
do it?

12

13

MR. RICH: Yes.

14

THE COURT: And other than this, Mr.

RICH, I take it that the report is correct.

15

MR. RICH: Yes, Your Honor.

16

17

THE COURT: And Mr. Langrock, you

didn't indicate yesterday any points that you wish to clarify -

18

19

MR. LANGROCK: Well, I think that the

report is a -

20

THE COURT: - in the report?

21

22

23

24

MR. LANGROCK: - fair objective state-
ment of this man's background. There, to reconstruct the whole
life time and put it in as many details as impossible, but I
think that it fairly represents what the status of Mr. RICH's
life has been.

SEP 12 1974

1 THE COURT: Well, I will say that in
 2 the statement to the Court yesterday, you were careful and
 3 thorough and thoughtful and in reconstructing the whole life
 4 pattern of Mr. RICH's experiences up to this day.

5 " Is there any reason that you know of,
 6 Mr. LANGROCK, why sentence should not be imposed at this time?

7 MR. LANGROCK: I do not, Your Honor.

8 THE COURT: And, Mr. RICH, do you know
 9 any reason why Court should not impose sentence at this time?

10 MR. RICH: No, I don't.

11 THE COURT: Is there anything further
 12 that you wish to say to the Court, Mr. Langrock, beyond your -

13 MR. LANGROCK: Nothing, Your Honor.

14 THE COURT: - argument of yesterday?
 15 Mr. RICH, is there anything that you wish to say in your own
 16 behalf or are there any facts or circumstances that you wish
 17 to bring to the Court's attention before sentence is imposed?

18 MR. RICH: (No oral response; nodded
 19 head negatively).

20 THE COURT: And I take it that you
 21 have nothing to say to the Court?

22 MR. RICH: No, I don't.

23 THE COURT: And the Government, I
 24 expect, has nothing further.

25 MR. O'NEILL: Nothing further, Your
 26 Honor.

27 THE COURT: Well, the Court will say

SEP 12 1974

1 that this is a most thorough sentencing hearing that has come
2 before me by way of presentation of the facts and circumstances,
3 not only as it relates to this particular offenses that have
4 been charged, but with the, - to which the Defendant has
5 pleaded guilty, - but also to his life pattern and his back-
6 ground.

7 I will say that counsel, both for the
8 Defendant and for the Government have been in, - extremely
9 careful to see that all of the relevant material and all of the
10 relevant factors have been brought to the Court's attention.
11 Including underlying facts that - in the background of the
offenses that, as they were committed.

12 And I will say that Defense Counsel
13 and Counsel for the Government, as well as the Federal Enforce-
14 ment officials who have been involved in this case, deserve
15 commendation in the manner in which they have made this presen-
16 tation. And, it's in the best interests of Justice that it's
been done in this fashion.

17 The Court is mindful of the background
18 - I believe I am familiar with all of the social background
19 from which this crime developed and I agree that the interests
20 of society and the interests of the Defendant have been at war
21 and I hope that that war has come to a successful and proper
conclusion.

22 If these offenses could be taken out
23 context to be considered separate and apart from the total
24 scene, counsel's plea for leniency would be more compelling.

SEP 12 1974

1 But, the criminal offenses that are here involved, have deeply
2 affected the lives of others.

3 Unfortunately, Mr. RICH, you have
4 turned your capacity for leadership into an extensive criminal
5 operation. It's operation has reached deeply into the lives
6 of other people. Not only those who were the users of drugs,
7 some of those who participated in the enterprise which you
8 fashioned, but has also deeply affected the lives of the innocent
members of their families.

9 Many of these victims have appeared
10 here in Court before me - in this very court room.

11 The offense that you have committed
12 is different from some of those who have preceded you. Although
13 you may not appreciate it, I feel it's in your best interests
14 that the officers of the Drug Enforcement Agency and the other
15 representatives of the Federal Government, have been untiring
in their efforts to bring this enterprise to a conclusion.

16 I think that they have brought it to a
17 conclusion at a time when there is something in your life that
18 can be salvaged. If it had gone beyond the date of your apprehension,
perhaps more serious consequences would flow.

19 In this case, as in all cases, the
20 Court has to consider and weigh the factors of deterrence, the
21 public interests, against the considerations of rehabilitation.
22 And I will say in that regard that I think there are some sides
23 of your character and personality that are good and they can be
salvaged.

SEP 12 1974

PAGE

8

6 THE SENTENCE ON COUNTS 3, 6 and 9,
7 ARE TO FOLLOW AND TO BE CONSECUTIVE TO THE SENTENCE IMPOSED
8 ON COUNT 8.

9 Thus, as to Counts 3, 6 and 9, YOU
10 WILL BE COMMITTED TO THE CUSTODY OF THE ATTORNEY GENERAL FOR
11 A PERIOD OF FIVE (5) YEARS, WITH A SPECIAL PAROLE TERM OF FOUR
12 (4) YEARS, All of this to follow the sentence imposed on
Count 8.

13 THE SENTENCES ON COUNTS 3, 6 and 9
14 SHALL RUN CONCURRENTLY, BUT CONSECUTIVE TO THE SENTENCE IMPOSED
15 ON COUNT 8. So that a total of EIGHT (8) YEARS IS THE SENTENCE
16 OF THIS COURT, WITH A SPECIAL PAROLE TERM ON COUNTS 3, 6 and 9
17 OF FOUR (4) YEARS.

18 In imposing this sentence, the Court
19 has hope that your - that you will turn around and those counts
20 that you may have had that heretofore have ;been used wrongfully
and illicitly will be turned to some good.

Whether you do this or not, will
depend on your life in the place of confinement which will be
designated and I think there is enough to be salvaged so that
this can be done.

HERMAN J. VESPER
COURT REPORTER
P. O. Box 777
BRATTLEBORO, VERMONT 05301

81

PAGE

9

SEP 12 1974

1 MR. LANGROCK: If it Please the Court,
2 if I might have five mintues, my client has communicated cer-
3 tain matters he wants to discuss with me at this time and then
4 come back before this Court. I would ask for a recess of five
minutes.

THE COURT: Very well.

(Recessed from 10:07 a.m. until 10:30 a.m.)

MR. LANGROCK: My client has asked me
8 to ask the Court at this point, to request permission to withdraw
9 his "guilty" plea, on the four counts. I have talked to
10 my client, I have given him advice in this regard. He is not
11 on regarding my advice/this particular point on the circumstances.
12 I think that there is some merit in his right to do so. I
13 think I am in a difficult position to represent him at this
14 point. I would suggest that perhaps other counsel be appointed
15 to represent him forthwith in this matter. I expect that perhaps
16 that I would have to be a witness in any proceeding in
17 this matter. There is evidentiary basis, I think, for his position.

18 THE COURT: Well, if there is a re-
19 quest to withdraw a plea of "guilty" at this time, the request
20 is denied. Of course, under the Rules of Criminal Procedure,
21 the Defendant may make any appropriate Motion, and of course,
if he seeks other counsel, of course, that is his option.

22 MR. LANGROCK: If it Please the Court,
23 perhaps I should state for the record, that the advice that I
24 gave to my client, and I think that it is a matter of record

HERMAN J VESPER
COURT REPORTER
P O BOX 777
BRATTLEBORO, VERMONT 05301

82

SEP 12 1974

here. It's a very difficult situation. In fact, was, that I, in my experience, have never seen consecutive sentences imposed and given the circumstances in this case, I do not believe it should be the case. I told him that in my professional opinion that it wouldn't be and entered that upon the record, it was based upon these, that it was my understanding or at least it was my understanding based upon the standards of pleas of guilty, that had the Court intended to impose the sentence severer, then the total sentence than what I have indicated to the Court that in my professional opinion would be the case, that my client would have had an opportunity at that point, to affirm or reaffirm.

*Parole
Pardon*

There is no question that the Court had the power to impose the sentence. That was clear to him throughout this proceeding. But we do feel that the representations that I made and made in open court, my client, - there was no indication to him at any time that the Court would feel that my, - that the Court obviously has taken the position that my professional opinion was wrong in this matter, - that what I stated was wrong, - what would happen was wrong, and it does not appear that the Defendant has had an opportunity to either affirm or either withdraw his plea from the time the Court was aware that my representations as counsel and I feel that my-perhaps - I am in a very difficult position to argue this thing, because I will or would be a witness in any proceeding but I think that it should be called to the Court's attention and placed upon the record at this point.

SEP 12 1974

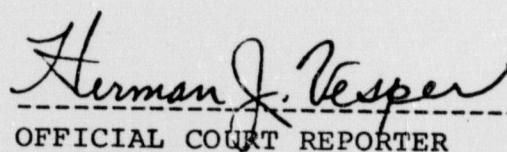
1 THE COURT: Well, the Court has in
2 mind your statement on the record and we explored that factor
3 very thoroughly at the time that the plea of "guilty" was
4 entered. You brought it to the Court's attention, the Court
5 indicated to the Defendant that the Court, that what your pre-
6 diction was, I take it it was more of a prediction than a pro-
7 fessional opinion, that that would have no bearing whatsoever
on the final disposition of this case.

8 The oral motion made of the Defendant
9 to withdraw the plea of "guilty" after sentence has been
10 imposed, is denied. The Court will recess at this time.

11 (10:24 a.m.)

12 CERTIFICATE

13 I, Herman J. VESPER, Official Court Reporter, U.S. District
14 Court, For The District of Vermont, hereby certify that the
15 foregoing 11 pages is a complete and accurate transcript of
16 both my verbatim stenographic notes and my electronic recording
of the actual sentencing in the case of THE UNITED STATES OF
AMERICA vs RONALD RICH, Criminal Action #74-15, which was
heard before The HONORABLE JAMES S. HOLDEN, Chief, U.S. District
Judge, For The District of Vermont, in Rutland, Vermont,
September 12, 1974.

17
18 
19 OFFICIAL COURT REPORTER

20 Rutland, Vermont
21 12 September 1974.

22
23
24
HERMAN J. VESPER
COURT REPORTER
P. O. Box 143
Rutland, VERMONT 05701
Rutland

84

HEARING ON DEFENDANT'S MOTION TO
WITHDRAW PLEA OF GUILTY

OCT 21 1974

TESTIMONY OF RONALD RICH - QUESTIONING BY AUSA O'NEILL ⁹

A. I pled guilty on my lawyer's advice.

Q But you did admit you were guilty, is that right?

A. Yes.

Q During the period of time Judge Holden took that plea from you, there were a number of statements made by Mr. Langrock and Mr. Davis was there, I believe, and also Mr. Gray of our office. Do you recall that?

A. You mean---

Q A number of different statements were made; not anything in particular, but do you remember there were statements back-and-forth?

A. Yes.

Q And, his Honor asked you a large number of questions, do you recall that?

A. Yes.

Q Do you recall a point in time when Mr. Langrock indicated to the Court he had made a professional judgment that in his opinion, paraphrasing--based upon his experience the Court would not impose consecutive sentences. Do you recall that?

A. Yes.

Q Do you also recall the Court, following Mr. Langrock's statement, indicating to you that it was not in any way bound by Mr. Langrock's professional judgment, and it could, if it saw fit, impose consecutive, concurrent, or

OCT 21 1974

10

the maximum sentence?

A. Yes. That is when I told Mr. Langrock I would like to tell about changing my plea, and he said, "No, the Judge will back down".

Q You are stating here Mr. Langrock told you if you stated what you wanted to, the Judge would not take your plea of guilty?

A. Yes.

Q But you wanted the Court to take your plea of guilty, right?

A. Yes.

Q So, therefore, you kept back from the Court certain facts at that time so the Court would take your plea of guilty?

A. On my lawyer's advice, yes.

Q But you had an opportunity that you, yourself, as an individual, on your own as an individual, to state to the Court what happened, is that right?

A. I paid my lawyer to represent me, and I was doing what he told me to.

Q Mr. Rich, we'll give you an opportunity to go through this, but answer the questions directly. If you wanted to that day, you could have stated to the Court what you understood, is that right?

A. Yes.

Q But you did not do so because you wanted to make sure the Court would accept your plea of guilty, is that a fair

OCT 21 1974

11

statement?

A. Yes.

Q Do you recall on the day your plea was taken that there were discussions of two maximums that you could be exposed to?

A. Yes.

Q First of all, the maximum under the count that you would get was 19 years?

A. Yes.

Q Do you recall on that particular date indicating you understood that his Honor could sentence you up to 19 years?

A. Yes, I do.

Q And, there was a subsequent time when there was discussion of the dangerous special drug offender situation, and it was explained to you if that was proved, you could get up to life imprisonment, based on that?

A. Twenty-five years, I believe.

Q Up to 25 years, I am sorry. You could get up to 25 years based on that?

A. Yes.

Q So, you knew you had maximums of 19 and 25, right?

A. Yes.

Q And, you also knew that 25 years could come on any one count, is that right?

A. Yes.

OCT 21 1974

12

Q In other words, assuming this dangerous special drug offender situation were proved?

A. Yes.

Q So that even without going to consecutive sentencing, assuming at the time of your plea and subsequently this had been proved, you could have gotten 25 years under any one count?

A. Yes.

Q Do you recall a point in time when the question of the dangerous drug offender label or statute was being litigated when you were here on the first day of court on the 1st day of September?

A. Yes.

Q And there was some discussion and finally the Office of the United States Attorney would withdraw that particular label and do you recall the time period I am talking about?

A. Yes.

Q Do you also recall Mr. Gray making a statement, and again I am paraphrasing, to the effect that the United States Government wished to make sure that there was leeway available and possibility of consecutive sentences, and perhaps this is a somewhat confused question, the Court indicated that if it felt it appropriate, it would impose consecutive sentences? Do you recall that?

A. I believe so, yes.

88

Q The Court did not say to you, "Mr. Rich, I intend to impose consecutive sentences"?

A. No.

Q Do you recall his Honor stating on that date he did not feel he was required to give you concurrent sentences; he could, if he wished to, give you a consecutive sentence? Do you recall that?

A. I don't remember the Judge saying it, no.

Q But if he did state it in court on that date, I take it you were paying attention and listening to the proceedings?

A. Yes.

Q Now, Mr. Rich, without going into the reasons therefore, which are not material here, you have been in court on a number of different occasions?

A. Yes, I have.

Q And, you have been before at least a reasonable number of different judges, is that a fair statement?

A. Yes.

Q During that period of time, you have been represented by counsel, and you have entered various pleas of guilty and not guilty?

A. Yes.

Q Would I be fair to you to say you are perhaps relatively experienced in dealing with the court system?

A. Never in a case like this, no.

OCT 21 1974

14

Q I am not asking you to try to give the degree. I am sure his Honor can take that into consideration knowing your past record, but would it be fair to state you had been in court on a number of different occasions?

A. Yes.

Q You have gone through at least one trial; if I am not mistaken?

A. Yes, I believe one; it could be two.

Q You have been in court on a number of different occasions at any rate?

A. Yes.

Q Would it be fair to say you had a pretty good idea of how the court system works?

A. State court, yes; not federal. I was never in federal before.

Q You had a good idea of the state system?

A. Yes.

Q Was there any attempt in your past when you entered a plea of guilty, unlike this? That is to say, you were told you would get a definite, specific thing if you pled guilty?

A. I don't recall, probably; but I never was told I would get something and not get it.

Q Were you ever promised a specific sentence before you pled?

A. I am not sure; probably.

Q But would it be fair to say you don't recall one way or

OCT 21 1974

15

the other?

A. Yes.

Q Now with respect to the matter of Mr. Langrock's representation of you, he and Mr. Davis spoke with you for about two hours, is that right?

A. I am just guessing.

Q I think you said Mr. Langrock told you at that time if you did not enter a plea of guilty he would withdraw from the same, is that right?

A. Yes.

Q So if you wanted a trial, you would have to go to another attorney, is that what you are saying?

A. Yes.

Q He indicated to you that if you wanted to try this case, he would get out, is that right?

A. Mr. Davis and Mr. Langrock did.

Q Both stated to you that if you wished to do anything other than plead guilty, they would withdraw from the case, is that right?

A. Yes.

Q And, it is your contention you felt you had to plead guilty for that reason?

A. No, but he was my lawyer and I was paying him to advise me, and he thought it was best.

Q Don't you recall thereafter you came into court and his

Honor indicating to you that if you wished to go to trial that another attorney would be obtained for you?

A. Yes.

Q Do you recall the Court specifically going to the question of Mr. Langrock's potential past conflicts and Mr. Davis' health and indicating that if either of these bothered you, if this was the reason you were pleading guilty, you should not plead guilty and other counsel would be obtained for you? Do you recall that?

A. I think so, yes.

Q Do you recall, basically, words to that effect?

A. Yes, I think so.

Q So you were led to understand that day in court that if Mr. Langrock and Mr. Davis were not available to defend you in the trial for any reason, you would be assured of counsel and also be given a reasonable period of time in which to prepare it, do you recall that?

A. Yes.

Q Now do you recall at any time in these proceedings the Court ever indicating to you, as you understood it, that it would only impose the sentence of 5 years?

A. No, but I thought I could change my plea after I was told I could, I had the right.

Q But the Court never told you that was your right?

A. No.

Q So would it be fair to say your reliance on this 5 years or ability to withdraw was based entirely on the representations of Mr. Langrock and Mr. Davis?

A. Yes.

Q This was the only source from which you obtained such information, is that right?

A. No, Mr. Parker of Mr. Langrock's office told me I could change my plea, too.

Q But it was only those three gentlemen, it was not the Court or the United States Attorney?

A. No.

Q In fact, before the sentencing proceeding began, the first day you were in court, I think that was in September; that is today I believe it was September 11th, the first day, do you recall the Court asking if there was any reason why the sentencing procedure should not go forward?

A. I don't recall.

Q If such a question was asked at that time, and you responded, you would respond truthfully, wouldn't you?

A. Yes.

Q Do you also recall, Mr. Rich, the second day, perhaps the first day, or whichever day it was, where the question came up and Mr. Langrock's rather extensive discussion of your background and so forth, that were presented to the Court?

- A. I believe so, yes.
- Q Do you recall one day that Mr. Langrock, after all the evidence had been submitted, gave the Court a rather long summation concerning your history and so forth and where you presently stood the day before you were sentenced?
- A. I believe so, yes.
- Q Do you recall the Assistant United States Attorney -- myself--made a statement at that time?
- A. Yes, but I don't remember what it was.
- Q Let me ask you specifically. You were paying attention to the proceedings that day, weren't you?
- A. Yes, I believe so.
- Q Do you recall a statement by the Assistant United States Attorney indicating that the Government felt it was inconceivable that the Court would sentence you to only 5 years and not give you a consecutive term of some sort?
- A. I remember inconceivable being said, but not like that.
- Q Government's Exhibit "l" for identification is the transcript of argument of counsel just prior to sentencing before the Court on September 11, 1974. Assuming September 11th is the date before sentencing and date of the argument, Mr. Rich, do you have that day in mind?
- A. Yes.
- Q Do you recall Mr. Langrock making a statement and the Assistant United States Attorney making a statement, and the

Court stating they would consider all the matter and sentencing would take place the next day?

A. Yes.

Q I show you what has been marked here as Government's Exhibit "1" and would you look over here on Page 22, this one paragraph starting on what is about Line 8 and read down through Line 17, and after you have had an opportunity to read that over, please let me know. (The witness read a document) Now, does this refresh your memory so you remember this being said?

A. Yes.

Q With your memory refreshed, do you recall the Assistant United States Attorney stating the Government felt it was inconceivable you would not receive a consecutive sentence, is that right?

A. Yes.

Q And, you did not, at that time, the day before you were sentenced, indicate to the Court that you had been promised 5 years, did you?

A. No, I didn't. My lawyer had it on record; I believe he said it was his opinion I would get it.

Q He stated to you it was his professional judgment you would only receive 5 years, do you recall that?

A. On the record he stated that, yes.

Q For the record. You realize and indicated other things

took place, but on the record you recall Mr. Langrock indicating that his professional judgment was that you would only get 5 years? Do you recall that?

A. Yes, he said the Judge never did it before and it would be concurrently.

Q He stated this in terms of his opinion, is that right?

A. I guess it was his opinion, yes.

Q Do you recall subsequently the Court stating that it did not; it was not in any way bound by this opinion or professional judgment of Mr. Langrock's?

A. Yes.

Q And, the Court stated it could impose whatever sentence he felt appropriate; it could be the maximum?

A. Yes, that is what I wanted to tell him, what Mr. Langrock told me.

Q Whatever conversations you had with Mr. Langrock, you did not make it known to the Court at that time?

A. No.

Q Mr. Rich, during this entire sentencing procedure, during the plea itself, you had opportunity in there where you could have indicated to the Court you were going to withdraw your plea if you got over 5 years, is that right?

A. I had opportunity, yes.

Q But you never did so, based upon the representations of Mr. Langrock, is that right?

to the Court's attention and for whatever reasons of your own did not do so, is that right?

MR. JOHN. We object to that question. It wasn't for any reasons of the defendant's own. He testified quite clearly and fully it was on representations of counsel that he did what he did.

THE COURT. We'll allow the answer.

A. Yes, it is for relying on my counsel; that is why I did it.

Q (By Mr. O'Neill) Mr. Rich, regardless of reliance on your counsel, you fully understood that to this point in time you had an opportunity to present that information to the Court and for the reason you indicated, you did not do so, is that right?

A. Yes.

Q So that at that time, you, yourself, were keeping back information, is that right?

A. I wasn't keeping back anything; I just didn't do it.

Q You didn't tell the Court?

A. I told how I done it.

Q For whatever reason you explained here, you did not tell the Court that information, is that right?

A. Yes.

MR. O'NEILL. Nothing further, your Honor.

MR. JOHN. Nothing further, your Honor, of

OCT 21 1974

25

on the record a waiver of the attorney-client privilege. I think that is privileged material.

MR. JOHN. I explained that to the defendant who is before the Court at this moment, and he is prepared to waive the attorney-client privilege.

THE COURT. Do you understand what that means, Mr. Rich?

MR. RICH. Yes, sir.

THE COURT. You understand Mr. Langrock doesn't want to reveal anything you may have told him unless you are willing that he should, because of the prior relationship between you and he, he having represented you? Do you understand that?

MR. RICH. Yes, I do.

MR. JOHN. I have explained to the defendant, your Honor, for the record, in answer to his question, "May Mr. Langrock's testimony today be used in any subsequent proceeding if there should be one," and I advised him it could be used, and you understand that, Mr. Rich?

MR. RICH. Yes.

Q (By Mr. John) Do you have, Mr. Langrock, the pending question in mind?

A. That is a very difficult question to answer. We have discussed each of these charges in some detail. I think Mr. Davis probably went over the particulars more than I

OCT 21 1974

26

did. I discussed with him what the Government could prove, what the State and Government could prove. Mr. Rich indicated to me that there was some involvement in these matters. We discussed each charge, and I gave him-- I believe I told him, on an individual basis, it would be very difficult for the Government to get a conviction on any particular count based upon the evidence. I did tell him, however, that because of the federal court criminal system where ten counts could be joined, that there was a very substantial possibility; one of the reasons this matter was discussed was the fact that there was approximately, at that time, I talked with him, probably believed to be about \$50,000. Later I think it was indicated about \$30,000 that the Government could show came from somewhere, but without its source, and Mr. Rich did indicate to me that there was some involvement that might account for that money. As to the specific counts, the ones I can think about at hand, he generally maintained his innocence. The conspiracy count, I explained to him the fact any participation might be sufficient to bring him into the conspiracy. I would say at that point he considered there was a very strong possibility he could be convicted, and innocence is a word of art, and we discussed the facts with Mr. Rich, and I think at all times he maintained his innocence to the specific charges of recognized facts which we

OCT 21 1974

27

considered a real possibility for him being convicted.

Q Of course, my question was directed to the specific charges, Mr. Langrock, and he did protest, as I understand your testimony, his innocence to those charges even though you felt, based on information obtained by you, he might have been involved in something, had some involvement. Is that your testimony?

A. I can't think of a single charge where he said everything the Government says about it is true. I think he admitted there was substantial truth in many of these charges, and in some charges said that there was not substantial truth. During the course of this matter we discussed the possibility, as I say, each individual charge standing on its own, and at no time did I ever think he said specifically, "I could be convicted of that charge," or, " I am guilty of that charge as read," with the exception being conspiracy, and that was only arrived at the last day of May, or whatever it was, in that long discussion.

Q Now you were in court when Mr. Rich testified as to conversations held between you and he and Mr. Davis on the day of actual change of plea in May of 1974. Did you hear his testimony, Mr. Langrock, relative to those discussions?

A. Yes, I did.

Q Did you, in fact, tell Mr. Rich that Judge Holden was a fair judge?

100

OCT 21 1974

28

A. I did.

Q Did you tell him in your professional judgment it was inconceivable, to you certainly, he would get more than 5 years sentence?

MR. O'NEILL. Yes, if he---

MR. JOHN. Strike the question.

Q (By Mr. John) Will you tell the Court, Mr. Langrock, exactly what that conversation consisted of?

A. If I could give a little background with it, I perhaps can tell you what best I remember what transpired. This was an extremely complicated, difficult case. The record will show I represented Mr. Rich at various times since he was 16 years old. I think it is fair to say, on his behalf, he probably relies more on me and my judgment than most of my clients. It is a long relationship, and I came to the conclusion that it was absolutely necessary, based upon the Government's case, that he enter a plea to whatever charges that we could work out early in the case with the Government. They indicated to me that if he would plead to some counts, which were never discussed, they would dispose of the case. It was never told to me if we did dispose of it in the near future they would consider filing the special notice of the dangerous drug offender. I discussed this matter with Rich earlier in the case and he said, "No, I am innocent". As time went on, I think

OCT 21 1974

29

the Government's case became stronger. They eventually filed their notice and eventually went back for a further indictment which carried the very serious mandatory minimum of ten years, no parole situation. I explained to Ronald this was, I think, the fifth time in the history of the United States this was indicated, and I felt the whole background of the case was because of his own personality, that the D.E.A. people were deliberately out to get him. He was being made an example of, and it was an over-kill situation here. I told him my feeling that the United States Attorney's office, and the fact, in part, were not putting this matter into prospective on a national basis, and I didn't think this was an appropriate matter, but I did tell him that this was extremely serious, there were extremely serious charges because of the fact there was sufficient money involved, because it was a ten-count indictment, because the Government could bring in pieces of evidence here and there, and whatever you say, a jury could over-ride; a careful analysis of the various facts could bring a conviction of some kind and with the conviction of the dangerous Number 10 Count, I told him with a jury verdict the last count could be challenged constitutionally, but I didn't think it would be effective with certain other matters. I think I discussed with him at various times, leading up to the last morning, the

102

OCT 21 1974

30

special dangerous drug offender notice situation. I told him I thought that was of no use to the Government; we could win that constitutionally as well as factually; that it had no significance in the case. I told him I had discussions with the United States Attorney's office, and they had been willing to drop the Number 10 Count which was the very serious count, and drop five other counts if we pled to four counts. There was some discussion on which counts the United States Attorney's office wanted that; none of these counts would carry more than a five year maximum penalty, and I thought that the United States Attorney's office would still require whatever rights they had under the notice of the special dangerous drug offender to be carried forward. As I told Mr. Rich, I wasn't worried about that; that had no real or legal basis as far as I was concerned, and we could win that aspect of the case. I told him as we got to the end of the negotiations with the United States Attorney's office as to particular counts that there is a possibility he could receive 19 years. I told him that in my experience of 14 years of practice, I had never seen a consecutive sentence of a serious count imposed. I had felt that this was a first offense of Mr. Rich; that his brother, who I think was equally involved in many ways as pointed out by the D.E.A., had gotten a four-year

103

OCT 21 1974

31

sentence; that I evaluated the case as a case where he could well expect the maximum on any one count, but I did not think this would be an exceptional case. I explained the difference from the state courts where a plea bargain could be negotiated to a very fine degree, and this is not possible in the federal courts. I explained to him that the United States Attorney's office, in any case, was not willing to talk in terms of a concurrent sentence but that I felt the United States Attorney's office was way out of line in this case going for overkill, and that the Court would never buy their approach to the matter. I pointed out to him that the federal statute, itself, pointed to a different disposition, a more serious maximum of ten years on a second offense, and we discussed all of these matters. I indicated to him what I would hope to do would be--this is prior to doing so--put on the record in open court that I made representations to him in this regard that he would not receive more than 5 years, and that if the Court at that point was willing to take the plea with those representations, that he was relying on my judgment in going forward, that the plea be taken and the presentence investigation be ordered. I indicated to him it was my understanding that a plea of guilty could be withdrawn if the circumstances arose which changed the material basis under which it was found.

104

OCT 21 1974

32

After long discussions and hard work on my part to convince him--I am still convinced it was the correct thing to do--he agreed to go along with that approach. He asked me, I think--I don't remember the exact words he said, "Can you guarantee me 5 years, no more than 5 years," and I first hedged. I said, "I can't guarantee you 5 years but I just don't believe there is a chance in the world it will happen otherwise," and he came back, "Can you guarantee it," and I said, "I can guarantee 5 years or an opportunity to withdraw your plea". My meaning at that point was that my expectation of what would occur if the Court came to the conclusion it had to impose a sentence greater than what I had made known upon the record. I indicated to my client in my professional judgment that the matter would be made known to my client, the basis under which he entered his plea be placed on the record was not a valid basis, and an opportunity be given to withdraw a plea, and it was made on that analysis of that procedure. We did have an indication and meeting in chambers where I believe Mr. O'Neill was present. Mr. Gray was present, myself and Mr. Davis. I don't remember, personally, whether the defendant was present. I don't believe he was, and I indicated to the Court that my client wanted to change his plea; it was an extremely difficult matter; my philosophy of the case was different from the Government's and indicated

OCT 21 1974

33

certain things on the record, and the Court listened, and he said, "We should go out in open court and proceed in such a fashion". We went out to open court, and I did put the matters on the record. At the time of the hearing in open court on the change of plea, a matter came out which had caught me a little by surprise. I had never received notice, personally, my file indicates I didn't, of the special dangerous drug offender notice. I felt the Government had not followed the notice proceeding, and, in fact, had filed only the original count that was going to be dismissed, and it was inapplicable. It turned out it was the subsequent notice in the file, and I believe at that point I asked for a recess so I could explain the aspects of that to Mr. Rich, and the other defense we had besides lack of appropriate notice. I am trying to think of anything significant. Mr. Rich did ask at one point to put upon the record, at counsel's table, this 19-year question came up, with the full power of the Court, and I had explained to him before that there was no way I could limit the powers of the Court in any way; I could make representations on the record which the Court would appreciate, being as they are, and so then I think was the time the Court said, "You understand you could get more than 19 years," Mr. Rich said something, "Shall I put on the record I will withdraw if I get more than 5

OCT 21 1974

34

years?" I said, "That is not necessary, let me handle this matter. It was my feeling at this point you legally have a right to do so as a conclusion of law, not of fact."

Q So he did, at that point, confer with you quickly at the counsel's table when Judge Holden was in the process of interrogating him, and he did want to put on the record at that point his understanding of the right to withdraw?

A. I don't know what he wanted to do. All I know is Ronnie relied completely on me. I advised him as to certain matters and put it on the record, and I intended to inform the Court exactly what our position was; as far as the right to withdraw, that was a matter, I felt, of law following the minimum standards. Not minimum standards but the standards of criminal justice.

Q Mr. Langrock, have I discussed your testimony with you prior to this morning here in open court?

A. We have had a short phone conversation relative to this matter, briefly. I have also talked to the United States Attorney's office --Mr. Gray--about the same amount of time. I have not discussed with either one in detail or I believe indicated to either of you the discussions I had personally with my client as to innocence.

Q Would you characterize the relationship existing between yourself and the defendant as being beyond that that

MR. JOHN. Thank you. You may inquire.

CROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Langrock, you are an experienced criminal lawyer, are you not, sir?

A. I think so, yes, sir.

Q You have been practicing criminal law in the state for how many years, approximately?

A. Both sides of the fence, 1½ years; a defense counsel, about 9 years.

Q And, you have practiced on that basis for relatively the same time in state and federal courts as a criminal attorney?

A. I would say in the state courts, quite extensively; in the federal courts I have handled ten or a dozen-- maybe not that many; probably ten criminal actions.

Q You have probably handled as many as other people have?

A. I feel I am experienced in criminal court, if that is the question.

Q Let me clear up a minor matter; I think it is minor. You have appeared here pursuant to subpoena, but as is often the custom, you agreed to appear here today and were given the subpoena after you arrived, is that right?

A. I indicated to Mr. John--he wrote me a letter asking me to be here and I told him I would not testify unless I was subpoenaed.

been working on it, but at least through that date you were in this case a substantial period of time?

A. Right.

Q You indicated on the record you had given Mr. Rich certain professional judgment based upon your experience and so forth, is that right?

A. Yes, sir.

Q Now these judgments that you were giving to Mr. Rich were represented to him as your professional opinion as an attorney, relatively experienced in these areas, but not a guarantee as to what sentence he would receive, is that a fair statement?

A. I am not really sure it is.

Q Feel free to explain it.

A. It was a conditional matter. I indicated to Mr. Rich I can't guarantee what the ultimate disposition would be. What I did, in fact, do and I am sure he relied on it was guarantee under the circumstances of this particular plea, all around he would not get more than 5 years, and that if he did get so, he could get back into the status quo of the situation, and at one point I remember him saying specifically, "Guaranteed," and I specifically said, "Yes" in the conversation.

Q Mr. Langrock, when you made these representations to Mr. Rich concerning the ability to withdraw his plea and so

OCT 21 1974

39

forth, am I correct in assuming you were relying on what is marked Government's Exhibit "3", THE STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE, and obviously, specific ones within that?

A. I was relying upon my total judgment of learning in the practice of law. I was familiar, in general, with these standards. I don't think I specifically looked at any standards that day. I made certain judgments knowing what the legal consequences of certain actions were.

Q You were aware of the fact that in the state court system here in Vermont, counsel for both sides have an opportunity to arrive at the specific disposition and bring that disposition to the Court's attention, and if the Court does not at any time indicate it was willing to go along with this very specific disposition, that it may disaffirm, and an individual then may withdraw his plea, is that correct?

A. No. Plea bargaining is a very, very complicated and subtle matter. Some times it works that way. With various judges, it works different ways; with various prosecutors it works different ways. I could tell you in plea bargaining it might be a writ of treatise on that, and your treatise is written on that, but I can't characterize it as simple as that, but I will say in the state courts it is generally easier to get a more specific plea bargaining than in the federal court system.

OCT 21 1974

41

direction of recognized open plea negotiations but had no formal procedure for it as yet.

Q But as of the time the plea was entered and the sentences took place, you did not believe the new standard had gone into effect?

A. Certainly not on the record. The Rules of Federal Evidence have an effect on trials.

Q But you understood there was no such procedure?

A. That is right.

Q You also, at time of plea and time of sentence, indicated on the record to the Court you made certain professional judgments to your client?

A. I did.

Q Do you recall specifically the Court indicating to you and also to Mr. Rich, more specifically, that while you were certainly entitled to make these professional representations, the Court was in no way bound by these representations?

A. Certainly. I never intended the Court be bound with our representations. The Court had the opportunity to sentence a man to whatever conviction he pled to. There is no question.

Q You never represented to Mr. Rich the Court did not have the authority to sentence Mr. Rich to whatever he desired?

A. Certainly not.

110a

OCT 21 1974

42

Q What you were stating to Mr. Rich was your thought, or opinion, or whatever type of preparatory language you wish to use to indicate that was your belief as to the sentence the Court would impose, is that correct?

A. No. Ever since the Atwood case and other matters, the pleas of guilty can be entered under certain conditions. You can enter a plea of guilty even if you aren't guilty because you are worried about the sentence, and I told Mr. Rich I thought this was a difficulty between the United States Attorney's office and myself, and the Department of Drug Enforcement, and I thought the ultimate way of handling this matter was to put what, from my experience, was the maximum disposition and state it plainly on the record. It was my judgment this would be the maximum disposition, and that he, in fact, was relying on my judgment in this regard, and entered a plea of guilty, and I thought that would dispose of the case provided that the Court agreed with my evaluation of the facts. If the Court did not agree with my evaluation of the facts, I assumed the position would be given that the Court would not do so and my client would have the opportunity to go back on the status quo.

Q You said you assumed this would be the case. You never represented to the Court, on or off the record, or any time, that if the Court did not agree with your profession-

OCT 21 1974

43

al judgment, it should allow Mr. Rich an opportunity to withdraw his plea of guilty, did you?

A. I never specifically said that we are entering this plea conditioned upon the fact that we reserve our right to withdraw it if the Court doesn't agree. I think it was implicit is what I intended to say, and said to the Court this is what I did advise Mr. Rich. I may have made an incorrect legal conclusion, but that was my understanding of the law, and it was the fact I communicated to Mr. Rich. I also had discussions with Mr. Gray of your office concerning this matter, and we discussed the possibility, and he seemed to think the law was different than I said. I said, "No, I think the law is this way," and we discussed the minimum standards, and on a couple of occasions I also discussed my position with this matter to some extent with the probation officer that did the presentence investigation--I don't remember specifically--but these matters, I was not trying to hide the position I thought was a matter of law and was quite clear what I was saying when I put upon the record his reason for entering a plea. I could not conceive of any other reason I would put professional judgment on the record at the time of offering the plea except to protect the record for Mr. Rich in this regard.

Q If you wanted to protect the record, Mr. Langrock, you

OCT 21 1974

44

could have stated to the Court on the record, "Your Honor, this is my judgment. If the Court does not intend to follow this, we request an opportunity to withdraw the plea"?

A. I could have been more explicit. The reason I wasn't was the fact that federal rules are less; it is a matter of the degree of subtlety in trying to handle the situation in making a clear and protected record for my client without calling it was a tough case. It was a heavy count, and I was trying to get a clean record without trying to get in personality problems and without putting anybody in an embarrassing position and trying to dispose of a difficult criminal case in as straight forward and simple way as could be done and with retrospect to the Court's ruling on the legal issue is different than mine, I am sure I was incorrect in making the legal conclusions I did.

Q Thank you. You were giving your professional judgment, and you indicated, yourself, at this time with respect to the ability to withdraw the plea that some other people disagreed with you as to the law on the matter, is that right?

A. Yes. The only person that disagreed was your office.

Q Fine, but someone did disagree so it was not a matter of everybody unanimously agreeing with you that was the law?

113

OCT 21 1974

49

text. I don't mean just the two hour discussion. I mean 9 years of dealing with Ronnie, and I am sure I indicated to him, "Ronnie, if you can't trust my judgment in this case, you really don't want me as your lawyer. It is very difficult for me to go in here and spend two weeks of time and see you go down the drain on something I think should be disposed of in this fashion".

Q Specifically, did you ever tell Ronald Rich if he did not follow your judgment you would refuse to work with him any further?

A. Words to that effect. I don't remember the whole conversation, but I made it clear to him if he didn't follow my advice here, I sure as hell didn't want to go to trial for him. There is no question I made that position clear to him. I can't remember the exact words, but it has to be taken in full context.

Q But the context was you felt if he did go to trial there was a substantial likelihood he would be convicted and the best thing for him was to take what he could?

A. My position was there is almost a certainty, given the ten counts together and given the facts that you had, and given the basic attitude of the public, at this point he would be convicted, and he would ultimately have a more severe sentence as a matter of fact, and it was my advice to stand on his plea.

114

OCT 21 1974

50

Q Mr. Langrock, did you ever tell him or give Mr. Rich the impression that if he didn't do exactly what you said, that you were just going to get out and leave him standing in the cold?

A. I don't know what impression I gave him. I certainly didn't say that as such. I worked hard talking him into this plea, no question about it. I thought it was best for him, and I used tough argument on him. I think Ronnie knows I haven't deserted him at any time, and I wasn't about to desert him as such, but what I thought from my client, I can't tell you, but I did use every screw I had to convince him this is what I believed was the best for him, and I did so because I believed it was.

Q But you did not threaten to abandon him to the wolves, so to speak?

A. I did not threaten to abandon him to the wolves.

Q Mr. Langrock, I think you indicated at one point in time during the testimony here today you made reference to a two-hour conference that was had and you subsequently went out and made a number of representations on the record. Do you think everything embodied in the conference was put on the record?

A. I think everything was done. The conference in chambers was simply to indicate that some progress was being made, and my discussions with my client which I recall

count indictment.

THE COURT. Well, you recall I asked at the time the plea was accepted, asked Mr. Rich if there was any further understanding other than the discussion that had been had about dismissal of the counts to which the plea of not guilty had remained?

(LANGROCK) A. I don't remember the specific record, but my understanding of that question I am sure would have been answered that there were none, and it is my understanding there was none.

THE COURT. Then I asked Mr. Rich also, as I recall it, what your views were and that of Mr. Davis concerning the ultimate disposition in no way would control the Court.

(LANGROCK) A. Certainly couldn't, your Honor.

THE COURT. And, Mr. Rich responded he was acting through advice of counsel and I went on to state, "Are there any further understandings? You don't understand there is anything further about what action will be taken in your case other than what has been stated here in open court"?

A. That is right, your Honor.

THE COURT. And, Mr. Rich responded, "No"?

A. Yes.

THE COURT. Now, do I understand that you

represented to him that he had a right to withdraw his plea of guilty after sentence?

A. Your Honor, the question after sentence never came up, as I recall it. What I did represent to him was that he had entered his plea based upon reliance upon my judgment, and I stated it quite clearly on the record what those were; that I did not believe the Court would, under the minimum standards position, allow him to be sentenced, or the case to be disposed of based upon a different understanding, but the Court at that point could reject my entering the plea, the Court could wait until a presentence and see if the situation were such it could reject my representations, but if the time came when my representations, the very foundation of his plea, were something which were not to be relied upon, it would be specifically indicated they would not be, he would, at that point, either the plea would be voluntary at that point or go back to the status quo.

THE COURT. Well, do you mean to tell me that you, having in mind the provisions of Rule 32(d) about withdrawing a plea, you represented to him he could withdraw his plea after sentence?

A. I may not have in mind the provisions right now, or at that time, your Honor. I never did tell him after sentence. That, specifically, didn't occur to me we would

ever get that far where we are right here. As I indicated, what I expected was that if the Court--to be quite candid, I had never seen a consecutive sentence. I thought it was a first offense, and it didn't occur to me there was a real possibility. I felt legally if it was to become a real possibility, this would be made known that seeing that the plea was based upon foundation of my recommendations that if the Court did not accept those recommendations as a basis for it, that it would say specifically, "We are not able to follow the recommendations".

THE COURT. Well, this was long before the Court heard the evidence presented at the sentencing hearing, and I take it this is the time you made the representations to Mr. Rich?

A. This was at the time of the original plea.

THE COURT. And, after all the evidence was entered at the sentencing hearing, you never indicated, you thought this might be a matter that would vacate the sentence?

A. Quite frankly, your Honor, there was absolutely nothing as far as I was concerned at the sentencing hearing which aggravated it at all. As a matter of fact, I thought the Government had failed to show any substantial difference between it and Gary Rich. As a matter of fact, one of the Government's witnesses said Gary Rich was the same

sized dealer, a bigger dealer and had gotten four years. It was his first offense; this is my client's first offense. I expected my client to get the five year sentence, but not be treated on a consecutive situation.

THE COURT. Anything further?

MR. O'NEILL. I don't believe so, your Honor. If I could be free to look over one matter.

Q (By Mr. O'Neill) Mr. Langrock, you are not suggesting any part of the plea bargaining itself was not accepted by any of the parties?

A. Absolutely none. The only matter here at all was my basic understanding of the law that when I stated upon the record that my client was basing his plea on certain matters, that if these matters were not to be relied upon, it was quite clearly stated they would not be, he would have an opportunity to make a decision on continuing his plea.

Q This was your professional judgment?

A. The whole matter is professional judgment as to what is employed.

Q And, you did not make these representations known to the Court, is that right, or this belief he could withdraw his plea of guilty?

A. I did not discuss it. The record speaks for itself in this regard. I did not mean to withhold anything from

OCT 21 1974

57

the Court. As I stated, I was trying to put everything I said on it and draw certain conclusions of law. As a matter of fact, I think I should point out I argued and made one of these representations to Mr. Rich, the special drug offender was inapplicable in both law and fact in this particular case, and I did not discuss all my theories with regard to that, but I think this was one of the things I stated, and if I was wrong on the law in that, I would have expected that to go into the question of voluntariness of the plea.

Q Did you make it clear this matter with respect to withdrawing his plea was a matter of your professional judgment and subject to the Court's finding as interpreted by the Court?

A. I don't follow your question.

Q You indicated the matter with respect to the dangerous drug offender material, you gave him certain professional representations indicating you believed it did not apply, but that ultimately that was up to the Court, is that right?

A. Yes.

Q And, also with respect to the matter of his ability to withdraw his plea, this is a professional judgment based on what you understood the law, you were not necessarily the law, so to speak?

A. I made representations to Ronnie. If I was wrong and

120

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

RONAND RICH, Defendant

CRIMINAL NO 74-15

IFP 17 0 55 AM 7-1-75
LENK
RECEIVED
CLERK

NOTICE OF APPEAL

Notice is hereby given that RONALD RICH, Defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order denying his request to withdraw his plea of guilty entered in this action on the 12th day of September A.D. 1974.

DATED at Middlebury, County of Addison and State of Vermont this 20th day of September A.D. 1974.

LANGROCK AND SPERRY
Attorneys for Ronald Rich

By:

Peter F. Langrock, Esq.
A member of the firm
Drawer 351
Middlebury, Vermont 05753

CERTIFICATE OF SERVICE

I, Peter F. Langrock, a member of the firm of Langrock and Sperry, certify that I have served the above Notice of Appeal on William Gray, Esq., Assistant U.S. Attorney, by mailing a copy to him.

DATED at Middlebury, County of Addison and State of Vermont this 20th day of September A.D. 1974.

LANGROCK AND SPERRY

By:

Peter F. Langrock, Esq.
A member of the firm

Received and filed
at Rutland Post Office
Aug 26 1974
John S. Tolson
District Judge

128
J

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

RONALD RICH

CRIMINAL NO. 74-15

AFFIDAVIT OF JEROME F. O'NEILL

JEROME F. O'NEILL, being duly sworn deposes and states as follows:

1. The undersigned and William B. Gray are Assistant United States Attorneys for the District of Vermont in the office of George W. F. Cook, United States Attorney for the District of Vermont.

2. The undersigned and William B. Gray have been involved in the investigation into the criminal activities of Ronald Rich prior to his arrest on October 18, 1973, and have been responsible for the prosecution of Ronald Rich in Criminal No. 74-15 and its predecessor cases.

3. The undersigned and William B. Gray have prepared the case against Ronald Rich in Criminal No. 74-15 in terms of interviewing witnesses, examining and digesting reports, conducting grand jury investigation, and other such activities, and have on several occasions since the filing of this indictment and its predecessors prepared or commenced the preparation of the cases for trial.

4. The undersigned and William B. Gray have represented the Government at all stages of the cases against Ronald Rich.

5. The undersigned and William B. Gray have conducted an in depth examination of the case against Ronald Rich prior to the commencement of the sentencing hearing in September 1974, and prepared witnesses who would have testified at that hearing had it not been for the stipulation of counsel providing that the Court could consider certain evidence without testimony.

6. Based upon the experience of the undersigned and William B. Gray with this case and the preparation at the most recent stages, it is our belief that had Ronald Rich gone to trial in the spring or summer of 1974 that all of the witnesses whom the Government had proposed to call would have been available and would have testified against Ronald Rich. It is our belief based upon interviews with a number of the potential witnesses that at least one witness whose testimony is extremely important to the Government may refuse to testify in the future against Ronald Rich despite a grant of immunity and his previous willingness to testify, and with the realization that he could be held in contempt of court. Another witness who participated substantially in the importations of controlled substances which Ronald Rich is charged with is expected to finish his prison term shortly and to then leave this country for Canada where he resides, and where he is not amenable to subpoena. This latter individual may be reluctant to testify in the future and it also appears quite likely that once he leaves the United States he will not be willing again to return to testify in the case against Ronald Rich. Many of the other individuals whom the Government would call as witnesses

have been convicted and sentenced in related cases and have scattered to various parts of the United States. There is an increasing likelihood that the Government will be unable to locate these individuals and subpoena them to testify in any future case against Ronald Rich.

7. The Government's case in Criminal No. 74-15 is built substantially upon the testimony of the former associates of Ronald Rich and thus the absence of any or a number of these witnesses weakens the Government's case in a significant way. Government agents at no time purchased controlled substances directly from Ronald Rich and thus can only corroborate various aspects of the distributions Rich made. The testimony of the lay witnesses is critical to the Government's case.

8. A number of the events about which the lay witnesses would testify occurred two or three years ago and these individuals are of course subject to memory lapses over a period of time as any other witnesses. It is the Government's belief that the testimony of some of these individuals at this point in time would be substantially less effective than it would have been had trial taken place when Ronald Rich was previously given an opportunity to go to trial, and while these individuals still had the events more freshly in their minds following their own arrests in most instances.

9. The Government would be subject to substantial prejudice if Ronald Rich is allowed to withdraw his plea of guilty at this point in time and the Government were then required to go forward with its case against him.

Dated at Rutland, in the District of Vermont,
this 30th day of October, 1974.

UNITED STATES OF AMERICA

GEORGE W. F. COOK
United States Attorney

By:

JEROME F. O'NEILL
Assistant U. S. Attorney

Subscribed and sworn to before me this day
of October, 1974.

MARY A. O'ROURKE, Notary Public
My commission expires 2/10/75

United States Department of Justice

UNITED STATES ATTORNEY

DISTRICT OF VERMONT
RUTLAND, VERMONT 05701

March 28, 1975

Honorable A. Daniel Fusaro
Clerk, Second Circuit Court of Appeals
Foley Square
New York, NY 10007

Re: United States v. Ronald Rich
Docket No. 74-2681

Dear Mr. Fusaro:

Enclosed are ten copies of the Appendix for the United States in this case. Copies of the Brief are being forwarded under separate cover.

A copy of the Appendix has been served upon counsel for Defendant Rich.

Sincerely yours,

George W. F. Cook
United States Attorney
By: *Jerome F. O'Neill*
Jerome F. O'Neill
Assistant U.S. Attorney

rj
enclosures
cc: Leo F. Barile, Jr., Esq.
P.O. Box 532
40 Western Avenue
Brattleboro, VT 05301

